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No. 90-1744

United States Supreme Court

October Term, 1990

T. CARLTON RICHARDSON,
Petitioner,

vs.

THE FLORIDA BAR, an agency of
THE SUPREME COURT OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND APPENDIX

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96

QUESTIONS FOR REVIEW

(1) Whether the disciplinary rule of the Florida Bar governing fees for legal services violates Section 1 of the Sherman Act [15 U.S.C. Sec. 1]?

(2) If the disciplinary rule of the Florida Bar governing fees for legal services violates Section 1 of the Sherman Act, is the antitrust violation immune from enforcement under the "state action" exemption?

(3) Is the Florida Bar disciplinary rule governing fees for legal services void for vagueness on its face or as applied under the 14th Amendment of the Federal Constitution?

(4) Does the attorney disciplinary proceedings violate the 14th Amendment of the Federal Constitution if African-Americans were excluded from the grievance committee of the Florida Bar under a *de facto* discriminatory selection process?

(5) Does the attorney disciplinary proceedings violate the 14th Amendment of the Federal Constitution where there was *ex parte* participation by the Florida Bar's counsel in the closed deliberations of the grievance committee during the show cause stage of the proceedings?

(6) Does the attorney disciplinary proceedings violate the 14th Amendment of the Federal Constitution where the finding of misconduct and the discipline imposed is based upon a Florida probate court's judgment against the accused attorney rendered without subject matter or personal jurisdiction?

(7) Without violating the 14th Amendment of the Federal Constitution, can an attorney disciplined for misconduct be required to pay restitution under a State probate court's judgment against the attorney awarded to a third-party beneficiary of the attorney's legal services agreement where notice of the judgment was never provided the attorney in time to perfect an appeal?

8) Without violating the Taking, Due Process or Equal Protection Clauses of the 5th and 14th Amendments of the Federal Constitution or 42 U.S.C. Section 1983 of the Federal Civil Rights statutes, can an attorney be required to pay restitution under a disciplinary decision to a non-contracting third-party beneficiary of a fee agreement who paid no part of the consideration, an amount which exceeds — excluding attorney fee sanctions and costs — the total consideration received under the fee agreement by the attorney?

(9) Whether the Due Process rights under the 14th Amendment of the Federal Constitution of an accused attorney in a Florida Bar disciplinary proceeding is violated where the reviewing appellate court and licensing authority, the Supreme Court of Florida, made findings of fact upon contested fact issues not decided by its judicial referee and imposed a stiffer penalty depriving the accused attorney of property without according the accused attorney an opportunity to be heard?

(10) Is the Florida Bar regulation which allows costs to the Bar as complainant if successful, but not to the accused attorney if successful, unconstitutional as a denial of Due Process or of Equal Protection of the laws under the 14th Amendment of the Federal Constitution?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS INVOLVED BELOW xii

JURISDICTIONAL STATEMENT 1

CONSTITUTIONS, STATUTES, AND REGULATIONS INVOLVED 1

STATEMENT OF THE CASE 2

Background 2

Raising Federal Questions 6

REASONS FOR GRANTING WRIT 7

Preface 7

1. Fee Regulation Rule Violates Antitrust Laws 10

Power to Discipline: No Exemption 10

Access to Courts: No Justification 11

"Officer of Court": No Justification 15

2. Fee Regulation is Unconstitutionally Vague 15

3. Disciplinary Proceedings Violate Due Process and Equal Protection Guarantees 15

Grievance Panel Excluded African-Americans and Bar Counsel Had Ex Parte Contact with Panel 18

Page

Discipline Based Upon Void Judgment and Constitutes Property Deprivation 15

4. Denial of Opportunity to be Heard 25

5. Cost Allowance Regulation Unconstitutional 25

CONCLUSION 26

APPENDIX

Index ..... a-i - a-ii

Appendix ..... a-1 - a-54

TABLE OF AUTHORITIES

Page

Statutes/Rules:

U.S. Const., 5th Amd. ..... ii, 1, 18, 20, 22, 23, 24, 25
U.S. Const., 14th Amd. ... i, ii, 2, 16, 18, 20, 23, 24, 25, 26
15 U.S.C. Sec. 1, Sec. 1, The Sherman Act 2, 12
28 U.S.C. Sec. 1257(3) 1
42 U.S.C. Sec. 1983 ..... 2, 23
Fla. Const., Art. 5, Sec. 15 ..... 3, 10
Fla. Stat. Sec. 454.021 ..... 3, 11
Fla. Stat. Sec. 454.11 ..... 2, 11
Fla. Stat. Sec. 455.201(1) 2, 11
Fla. Stat. Sec. 455.201(3) 2, 11
Fla. Stat. Sec. 455.225 ..... 2, 26
Fla. Stat. Sec. 542.01, *et seq.* 2, 11
Fla. Stat. Sec. 542.16 ..... 2, 12
Fla. Stat. Sec. 731.105 ..... 2, 21
Fla. Stat. Sec. 733.6175 ..... 2, 22
Fla. Stat. Sec. 733.619(1) 2, 20
Fla. Stat. Sec. 733.619(3) 2, 20
Fla. Code of Professional Responsibility,
DR 2-106(A) and (B) 2, 8, 16, a-53
Fla. Bar Rules, Sec. 3-7.5(k)(1)(5) 2, 8
Fla. Bar Rules, Sec. 4-1.5 ..... 2, 25

Cases:

American Tobacco Co. v. U.S.,
328 U.S. 781, 66 S.Ct. 1125 (1946) 15

Arizona v. Maricopa County Medical Society,
457 U.S. 332, 107 S.Ct. 2466 (1982) 13, 14

Atkinson v. Woodmansee,
68 Kan 71, 74 P. 640 (1903) 25

Barch v. Giblin,
164 So. 831 (Fla., 1931) 15

Barr v. Watts,
70 So.2d 347 (Fla., 1954) 11

Page

Bates v. State Bar of Arizona,
433 U.S. 350, 97 S.Ct. 2691 (1977) rev'd
460 U.S. 462, 103 S.Ct. 1303 (983) 10

Beck v. Beck,
383 So.2d 268 (Fla. 3rd DCA, 1980) 22

Cal. Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.,
445 U.S. 97, 100 S.Ct. 937 (1980) 11

Chicago B.&O. Railroad Co. v. Chicago,
166 U.S. 226, 17 S.Ct. 281 (1897) 22, 24

City of Lafayette v. La. Power & Light Co.,
435 U.S. 389, 98 S.Ct. 1123 (1978) 10

Coates v. City of Cincinnati,
402 U.S. 611, 91 S.Ct. 1123 (1978) 16

Community Communications v. City of Boulder,
455 U.S. 40, 102 S.Ct. 835 (1982) 12

Connally v. General Construction Co.,
269 U.S. 385, 46 S.Ct. 126 (1925) 16

Crawford v. Bounds,
395 F.2d 297 (4th Cir., 1968) 19

Dow v. Carnegie Ill. Steel Corp.,
224 F.2d 414 (3rd Cir., 1955) 19

Estate of Leula King, Deceased,
No. 84-00732, Div. "A", Hillsborough
Cty. Cir. Ct. (Alvarez, J., 1986) 4

Estate of Leula King, Deceased,
Id. (Alvarez, J., 1988 3

Feldman v. Gardner,
661 F.2d 1295 (D.C.Cir., 1981) 10

F.T.C. v. Superior Court Trial Lawyers Assn.,
110 S.Ct. 768, 58 L.W. 4145 (1990) 13, 14

Page

Fuller v. Watts,
74 So.2d 676 (Fla., 1954) 11

Gibson v. Berryhills,
411 U.S. 564, 93 S.Ct. 1689 (1973) 18

Goldfarb v. Virginia State Bar,
421 U.S. 773, 95 S.Ct. 2004 (1975) 13, a-54

Gould v. State,
127 So. 309 (Fla., 1930) 11

Grayned v. City of Rockford,
408 U.S. 104, 92 S.Ct. 2294 (1972) 17

In re Estate of Lieber,
103 S.2d 192 (Fla., 1930) 22, a-39

In re Murchison,
349 U.S. 133, 75 S.Ct. 623 (1955) 18

In re Ruffalo,
390 U.S. 544, 99 S.Ct. 1222 (1968) 17

Jackson v. Superior Court,
290 P. 448 (Cal., 1930) 21

Kiefer-Steward Co. v. Joseph E. Seagram & Sons,
340 U.S. 211, 71 S.Ct. 259 (1951) 12, 13

Kolender v. Lawson,
461 U.S. 352, 103 S.Ct. 1855 (1983) 17

Leis v. Flynt,
439 U.S. 438, 99 S.Ct. 698 (1979) 23

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306, 70 S.Ct. 652 (1950) 22, a-40

Mennonite Bd. of Missions v. Adams,
462 U.S. 799, 103 S.Ct. 2706 (1983) 23

National Society of Professional Engineers v. United States,
435 U.S. 679, 98 S.Ct. 1355 (1978) 13

Page

Neal v. Delaware,
103 U.S. 370, 26 L.Ed. 567 (1881) 18

New Motor Vehicle Board of California v. Orrin W. Fox Co.,
439 U.S. 966, 99 S.Ct. 403 (1978) 11

Papachristou v. City of Jacksonville,
405 U.S. 156, 92 S.Ct. 839 (1972) 17

Peters v. Kiff,
407 U.S. 493, 92 S.Ct. 2163 (1972) 18

Pennoyer v. Neff,
95 U.S. 714, 24 L.Ed. 565 (1897) 21

Richardson v. Jones,
508 So.2d 739 (Fla. 2nd DCA, 1987) ..... xi, 3, a-22

St. Joseph Stock Yards v. U.S.,
298 U.S. 38, 56 S.Ct. 720 (1936) 25

Selling v. Radford,
243 U.S. 46, 37 S.Ct. 377 (1917) 24

Smith v. Texas,
311 U.S. 128, 61 S.Ct. 164 (1940) 19

Spitzer v. Branning,
184 So. 770 (Fla., 1938) 22

State v. Porro,
377 A.2d 950 (N.J. Super., 1977) 19

State v. Smith,
262 A.2d 868 (N.J., 1970) 19

State ex rel Fl. Bar v. Murrell,
74 So.2d 221 (Fla., 1954) 11

Strauder v. West Virginia,
100 U.S. 303 (1880) 9

Page

Supreme Court of N.H. v. Piper,
470 U.S. 274, 105 S.Ct. 1272 (1985) 15, 16

The Fla. Bar re Amendment,
494 S.2d 960 (Fla., 1986) a-54

The Fla. Bar re Amendments to Rules, etc.,
558 So.2d 1000 (Fla., 1990) 14

The Fla. Bar v. Richardson,
No. 73,214 (Fla., Apr. 19, 1990, *rev.*
Feb. 14, 1991) ..... iii, xi, 1, 5, 7, 15, 18

The Fla. Bar v. Wynn,
208 So.2d 800 (Fla., 1968) 16

Tomsky v. Superior Court,
63 P. 1020 (Cal., 1901) 21

Tulsa Prof. Collection Svcs, Inc. v. Pope,
485 U.S. 478, 108 S.Ct. 1340 (1988) 23

United States v. L. Cohen Grocery Co.,
255 U.S. 81, 41 S.Ct. 298 (1921) 16

United States v. Tex. St. Bd. of Public Accountancy,
464 F.Supp. 400 (1978), aff'd 592 F.2d 919
(5th Cir., 1979) 10, 13, 14

United States v. Trenton Potteries Co.,
273 U.S. 392, 47 S.Ct. 377 (1927) 12

United States v. Socony-Vaccum Oil Co., Inc.,
310 U.S. 150, 60 S.Ct. 811 (1940) 12, 14

Virginia v. Rives,
100 U.S. 313, 25 L.Ed. 677 (1880) 19

Withrow v. Larkin,
471 U.S. 35, 95 C.Ct. 1456 (1975) 18, 19

Page

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286, 100 S.Ct. 559 (1980) 20

Wrighten v. U.S.,
550 F.2d 990 (4th Cir., 1977) 24

Zauderer v. Ofc. of Disciplinary Counsel,
Supreme Court of Ohio,
471 U.S. 35, 105 S.Ct. 2265 (1985) 17

Other References:

Comment, "Controlling Lawyers by Bar
Associations and Courts",
5 Harv. Civ. Rts.-Civ. Lib. L. Rev. 301 (1970) 17

Comment, "The Privilege Against Self-Incrimination
in Bar Disciplinary Proceedings:
What Ever Happened to *Spevak*?",
23 Vill. L. J. 127 (1977) 17

OPINIONS RENDERED BELOW

1. *The Fla. Bar v. Richardson,* No. 73,214 (Fla., April 19, 1990 as revised February 14, 1991) [Exhibit "A", annexed]

2. "Report of Referee", *The Fla. Bar v. Richardson,* Case No. 73,21-4 (August 29, 1989) [Exhibit "1B", annexed]

3. Oral Ruling of Referee, *The Fla. Bar. v. Richardson,* Case No. 73,214, Transcript of Final Hearing at 458 to 459 (July 21, 1989) [Exhibit "1B", annexed]

4. "Amended Order on Refund of Fees", *Estate of Leula King, Deceased,* supra, (Alvarez, J., September 15, 1988) [Exhibit "3B", annexed]

5. *Richardson v. Jones,* 508 So.2d 739 (2nd DCA Fla., 1987) [Exhibit "4B", annexed.]

6. "Order Granting Motion for Reimbursement of Excess Attorney's Fee, etc.", as amended by Order dated April 16. 1986, *Estate of Leula King, Deceased,* supra (Alvarez, J., March 18,1986) [Exhibit "5B", annexed]

United States Supreme Court

October Term, 1990

No. _____

T. CARLTON RICHARDSON,
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vs.

THE FLORIDA BAR, an agency of
THE SUPREME COURT OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

1. The judgment in the *The Fla. Bar v. Richardson,* supra, was entered on April 19, 1990 and was *nun pro tunc* corrected on October 30, 1990 and revised on February 14, 1991. It became final on February 14, 1991.

2. A motion for rehearing was denied on February 14, 1991.

3. The statutory basis of jurisdiction in 28 U.S.C. Sec. 1257 (3).

CONSTITUTIONS, STATUTES AND REGULATIONS INVOLVED

Relevant portions of the following constitutions, statutes and regulations are set forth in the Appendix.

Federal:

5th Amendment, U.S. Constitution
14th Amendment, U.S. Constitution

Sec. 1, Sherman Act, 15 U.S.C. Sec. 1
42 U.S.C. Sec. 1983

State:

Fla. Const., Art. 5, Sec. 15
Fla. Stat. Sec. 454.021(1)(2)
Fla. Stat. Sec. 454.11
Fla. Stat. Sec. 455.201(1), (3)
Fla. Stat. 542.16
Fla. Stat. Sec. 731.105
Fla. Stat. Sec. 733.6175
Fla. Stat. Sec. 733.619(1), (3)
Fla. Code of Professional Responsibility, DR 2-106 (A) and (B)
Fla. Bar Rules, Sec. 4-1.5
Fla. Bar Rules, Sec. 3-7.5(k)(1)(15)

STATEMENT OF CASE

Background

On August 29, 1989 a Referee appointed by the Supreme Court of Florida recommended that the Petitioner [''accused Attorney'' or ''Attorney''], an attorney duly licensed in the State of Florida who practices and resides in Washington, D.C., be found guilty of charging a ''clearly excessive fee'' in violation of the Florida Bar's [''Bar''] Disciplinary Rule 2-106 (''Fees for Legal Services''), which provides, in pertinent part:

> (A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
>
> (B) A fee is clearly excessive when, after review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.

See, Appendix [''Appx.''], Exhibit ''1B'': Report of Referee; Exhibit ''2B'': Oral Ruling of Referee; Exhibit ''13C'': DR 2-106. These disciplinary proceedings resulted from a complaint filed in October, 1985 by the accused Attorney's clients,

Roosevelt and Perry Jones, a married couple, alleging that the Attorney had charged an excessive fee.

The clients entered into fee agreements with the Attorney for legal services on March 31, 1983 and was discharged in June, 1985. Services were rendered during the period and nine (9) invoices issued and fully paid at the time of discharge. The legal services rendered the clients by the Attorney consisted, in part, of a probate matter — the administration and settlement of the Estate of Leula King ["King Estate"] in the Probate Division of the Hillsborough County Circuit Court ["the probate court"] — but also included an estate plan, consumer problems, and small scale real estate development. The fee for the probate matter was $6,743.40 (Sixty-Seven Hundred Forty-Three and 40/100 Dollars) and for the other matters $2,718.90 (Twenty-Seven Hundred Eighteen and 90/100 Dollars), for a total fee of $9,462.30 (Nine Four Hundred Sixty-Two and 30/100 Dollars) for both matters.

Contemporaneous with the bar disciplinary proceedings, the husband — a beneficiary of an undivided one-third interest in the Estate along with his two siblings — had, subsequent to engaging the Attorney's services, been appointed personal representative of the King Estate in 1984, filed a final account and petition for discharge requesting the probate court for reimbursement of legal fees paid the Attorney from personal funds of the wife in November, 1985. The Attorney was allowed to withdraw after discharge by the probate court in August, 1975.

In various court proceedings, involving appellate procedures and a remand [See, Appx., Exhibit "4B": *Richardson v. Jones*, 508 A.2d 739 (2nd DCA Fla., 1987)], the probate court on September 15, 1988, awarded judgment against the Attorney to the King Estate in the amount of $15,670 (Fifteen Thousand Six Hundred Seventy Dollars), consisting of the sum of $7,970 (Seventy-Nine Hundred and Seventy-Dollars), i.e. $10,550.99 (Ten Thousand Five Hundred Fifty and 99/100 Dollars) found to have been paid to the Attorney for services rendered in the

King Estate minus $2,650.29 (Twenty Six Hundred Fifty and 29/100 Dollars) which was approved by the court to be paid from King Estate funds, plus interest and attorney fees of $7,500 (Seventy-Five Hundred Dollars), i.e. $1,000 (One Thousand Dollars) for appellate proceedings, and $6,500 (Sixty-Five Hundred Dollars) for proceedings in the probate court found to be without justification in fact or law. See, Appx., Exhibit "3B": Amended Order on Refund of Attorney Fees, *Estate of Leula King, Deceased,* Case No. 84-00732, Div. "A", (Alvarez, J., September 15, 1988); Exhibit "5B": Order Granting Motion for Reimbursement of Excess Attorney Fee. . .", *Id.*, (Alvarez, J., March 18, 1986 as amended). The actual amount received for estate administration services by the Attorney was the $6,743.40 (Sixty-Seven Hundred Forty-Three and 40/100 Dollars) previously mentioned, and this amount came from the personal representative wife's personal funds and not from estate funds.

No summons was ever issued by the probate court, a court with limited *in rem* jurisdiction under State statute, to the Attorney, nor did the Attorney receive any funds from the King Estate or could the King Estate by State law be obligated under the Attorney's legal services agreement with the clients, nor was the Attorney permitted a trial by jury, opportunity to counterclaim and implead non-parties to indemnify the Attorney, nor was a copy of the September 15, 1988 order ever provided the Attorney by the court or under its direction before the time for appeal had run. Under State law, the probate court proceedings are non-jury, however, contract actions not involving estate assets (which the Attorney's legal services agreement with the clients are not) are tried in the Civil Division of the Circuit Court, the general trial court, which permits jury trials, counterclaims, impleading of parties, etc.

On April 19, 1990, the Supreme Court of Florida affirmed and modified the recommendation of its Referee as to the vio-

lation of the disciplinary rule regarding charging a "clearly excessive fee" and ordered the Attorney suspended from the practice of law in Florida for 91 days commencing May 21, 1990 with reinstatement after proof of rehabilitation and a two-year probationary period following reinstatement and conditioned reinstatement upon payment of the probate court's judgment, and costs of $5,144.81 to the Florida Bar. See, Appx., Exhibit "A": *The Fla. Bar vs. Richardson,* No. 73,214 (Fla., April 19, 1990, rev. February 14, 1991).

Bar disciplinary proceedings involve an investigation by a panel of grievance committee members usually with the assistance of the Bar's local counsel, one member being assigned as investigator, for the judicial circuit wherein an attorney practices, in this instance the 13th Judicial Circuit for Hillsborough County, Florida, which consist of lay and attorney members, of a client's complaint, resulting in a probable cause hearing before the grievance committee panel, and if probable cause exist, then the Bar files a complaint in the Supreme Court which is then heard by a referee, who makes findings of fact regarding the alleged misconduct and makes recommendations on discipline to the Supreme Court, which is reviewed upon petition by either the Bar or the accused attorney. This disciplinary procedure was followed, however, the grievance committee having jurisdiction over the accused attorney's case excluded African-Americans completely, the Attorney was provided no information as to the backgrounds of the committee members although a request was made, nor was the Attorney allowed to question the committee members to determine their background, any biases, prejudice, and the like; further, the grievance committee considered the *ultra vires* September 15, 1988 judgment of the probate court during the show cause hearing over the accused attorney's objections, and allowed its committee investigator member to participate in the proceedings and deliberations and, further, permitted the Bar counsel to

participate in the deliberations *ex parte* after the formal hearing.

When the case was heard before the referee, the referee refused to dismiss the complaint because the counsel for the Bar participated in the closed deliberations of the grievance committee after the formal hearing where probable cause was found, nor on grounds of the racial composition of the grievance committee; further, the referee failed to exclude evidence of the *ultra vires* September 15th, 1988 judgment and permitted testimony by the Bar's expert — a member of one of the largest law firms in the State whose partner is a member of the Bar's Board of Governors which is charged with the responsibility of overseeing the disciplinary process, can reverse actions by the grievance committees and can oppose the referee's recommendations regardless of the outcome — in probate only as to the excessive nature of the services (probate, estate planning and others) rendered by the accused attorney to the clients. The Attorney's disciplinary case consisted of an attorney witness who testified that the fee charged was not excessive and documentary evidence, along with his own testimony.

The referee's oral ruling and Report found no illegality or prohibition against the fee. Nor did the opinion or Report find any intentional misrepresentation or fraud upon the clients as to either entitlement or amount of the fee. The referee concluded only that the fee charged was clearly excessive because of the client's ability to pay and recommended a public reprimand, restitution and other conditions.

Since the Florida Supreme Court's judgment is that of the highest State court, application to the United States Supreme Court ["Court"] is being sought for writ of certiorari to review.

Raising Federal Questions

The disciplinary proceedings are originated in the Florida Supreme Court. The Federal questions were raised in a Petition for Review before said court:

> "Richardson raises the following issues: (1) whether the use of illegally obtained evidence by the grievance committee panel and the referee violated Richardson's due process rights; *** (6) whether the exclusion of black persons from the grievance committee denied Richardson his due process rights; (7) whether the Bar counsel's participation in the deliberations of the grievance committee after the hearing without the presence of either Richardson or his counsel violated Richardson's due process rights; (8) whether the standards for determining excessive fees is unconstitutionally vague; (9) whether the standard as applied constitutes an impermissable restraint of trade in violation of federal antitrust laws; **(12) whether the costs were permissable or reasonable under the circumstances. We find these claims to be without merit". *The Fla. Bar v. Richardson*, supra, at Appx. a-5 to a-6.

Preliminarily, motions and other pleadings were filed and denied before the grievance committee requesting information regarding the panel, challenging the disciplinary rule on fees for legal services as violative of the Federal Constitution and antitrust laws, the racial composition of the panel, participation by the investigative member of the panel, receipt of evidence of the *ultra vires* probate court proceedings [See, Appx.. Exhibit "4D": Motion for Summary Dismissal; and "3D": Preliminary Motions] and before the Referee. See, Appx. "1D": Transcript of Preliminary Motions Before Referee.

The Federal constitutional and statutory questions were raised timely in the proceedings before the Florida Supreme Court and thus this Court should exercise its jurisdiction to issue the writ for the reasons contained herein.

REASONS FOR GRANTING WRIT

The Petitioner (referred to as "accused attorney") presents the following reasons in support of this application for a writ

of certiorari to review a disciplinary judgment of the Supreme Court of Florida and states:

Preface

Congress has expressed the strong public policy favoring a free market economy in goods and services. The Florida Supreme Court though its disciplinary rules seeks to regulate the fees that lawyers charge as to amount and method of determination (i.e. production) delegating to other lawyers of "ordinary prudence" the role of determining the reasonableness of the fee, considering, among other factors, customary charges for comparable work in the community. See, Florida Code of Professional Responsibility DR 2-106(A) and (B), Appx. at a-31. See also, *Fla. Bar Rules*, Sec. 3-7, 5(k)(1)(5). The Florida Supreme Court's discipline of Petitioner raises the important questions of (1) its immunity from such antitrust behavior under the guise of disciplinary rules, i.e. when does a State sanctioned licensing agency, in this case a court, cross the line in its professional licensing practices into the forbidden area of anticompetitive economic regulation where there is no specific, detailed legislative authorization, and (2) whether the regulation is vague on its face or as applied to the facts of this case. Additionally, the Federal appeals courts which have considered the antitrust issue involving state regulation of economic activities through the licensing function seemingly are in conflict and must be reconciled, not only *inter se*, but as to the decision of the Florida Supreme Court that its general power to discipline may permit such economic regulation in violation of antitrust laws under the state action exemption to antitrust laws.

Furthermore, must the disciplinary rules comply with Constitutional standards and be administered in accordance with due process of law, and specifically, is it permissable for the grievance process to exclude members of the African-American

community from its adjudicatory procedures, to permit *ex parte* participation by the complainant's, The Florida Bar ["the Bar"], counsel in the deliberations of an all-White grievance committee during the show cause phase in this process, to use evidence of a State court judgment rendered without subject matter or personal jurisdiction against the accused attorney in the proceedings, to allow costs to the Bar if successful and not the accused attorney if successful, and to make *de novo* factfinding and increase the discipline from reprimand to suspension, without according the accused attorney an opportunity to be heard.

This Court has consistently held that administrative procedures affecting the proprietary rights of individuals be fair, just and impartial, not in form, but in substance. Thus, preliminarily, there are these two strong public policies relating to economic freedom and fair and impartial hearings that compels this Court to grant the writ; And, this Court consistently has held that due process is denied by circumstances that create the likelihood or the appearance of bias and that exclusion of African-Americans from factfinding panels denies them the "privilege of participating equally . . . in the administration of justice". See, *Strauder v. West Virginia,* 100 U.S. 303 (1880). Furthermore, this Court has ruled against laws and regulations which deny equality among those of the same class. Surely, attorneys when disciplined should not have to pay a higher price for violating professional regulatory rules than does other similarly regulated professionals or state licensees.

These disciplinary procedures are Constitutionally defective: the fact-finding process is flawed by the use of an unjustified exclusionary selection process resulting in all-White grievance committees, *ex parte* contact by the Bar counsel with grievance committee members during their deliberations in the "show cause" phase of the disciplinary process, and the use of documentary and testimonial evidence underlying the render-

ing of a void judgment by a State probate court against the accused attorney. Recognizing the conflict *inter se* among Federal appeals courts and those courts' decisions and the Florida Supreme Court's action in this case, and the direct conflict of the Florida Supreme Court's affirmance of the unconstitutional conduct in its disciplinary procedures with other State courts of last resort or this Court's decisions governing due process and equal protection standards in adjudicatory proceedings involving proprietary rights, the writ should issue.

1. *Fee Regulation Rule Violates Antitrust Laws.*

The Florida Supreme Court seeks to justify its disciplinary regulation on legal fees upon its power to discipline attorneys granted by the State's constitution, Art. 5, Sec. 15, the necessity to allow access to the courts and the traditional role of the attorney as an "officer of the court". Each of these justifications are in conflict with the decisions of Federal appeals courts and this Court.

Power to Discipline — No Exemption. Unless there is specific statutory authority "pursuant to state policy to displace competition with regulation or monopoly public service" [*City of LaFayette v. La. Power and Light Co.*, 435 U.S. 389, 413, 98 S.Ct. 112, 1137 (1978)] there is no exemption from antitrust laws. See, *United States v. Tex. St. Bd. of Public Accountancy*, 464 F.Supp. 400 (1978), aff'd 592 F.2d 919 (5th Cir., 1979) [Power to adopt rules "for maintenance of high standards in the Accountancy profession" held not to mandate anticompetitive behavior.] But see, *Feldman v. Gardner*, 661 F.2d 1295 (D.C. Cir., 1981) [Power to govern admissions immunizes judiciary from antitrust claims that admissions policies constitute anticompetitive behavior.] See also, *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2671 (1977), *rev. on other grounds*, 460 U.S. 462, 103 S.Ct. 1303 (1983) [State action exemption for antitrust claim where court had ultimate authority

over practice of law and State statute specifically permitted antitrust behavior regarding lawyer advertising.] Accord, *New Motor Vehicle Board of California v. Orrin W. Fox Co.*, 439 U.S. 966, 109, 99 S.Ct. 403, 411-12 (1978) ["(A)nti competitive restraints engaged by state municipalities or subdivisions must be 'clearly articulated and affirmatively expressed as state policy' in order to gain an antitrust exemption." at n. 14]; *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105, 100 S.Ct. 937, 943 (1980) [If there is no clearly articulated and affirmatively expressed state anticompetitive policy, then the second criterion, i.e. "affirmative state supervision" is not relevant.].

In Florida, all professions are regulated by the Department of Professional Regulation, except attorneys, who are regulated by the Florida Supreme Court. Fla. Stat. Secs. 554-021; 454.11. The regulation of attorneys is both a legislative and judicial function, and there is concurrent jurisdiction as between these branches of State government. See, *Fuller v. Watts*, 74 So.2d 676 (Fla., 1954); *State ex rel Florida Bar v. Murrell*, 74 So.2d 221 (Fla., 1954); *Barr v. Watts*, 70 So.2d 347 (Fla., 1954); *Gould v. State*, 127 So.309 (Fla., 1930). The public policy of Florida in regards to the regulation of the professions is that no regulation should unreasonably restrict competition:

> "** No [regulatory] board shall take any action which tends to create or maintain an economic condition that unreasonably restricts competition, *except as specifically provided by law.*" (Emphasis Supplied) Fla. Stat. Sec. 455.201 (3)

While this provision expressly applies to all professions regulated by the Department of Professional Regulation and its boards and not the Florida Supreme Court who regulates attorneys, it does represent a statement of policy that the general grant of authority to regulate does not include anticompetitive behavior. In 1980, the Florida Legislature passed the "Florida

Antitrust Act", Fla. Stat. Sec 542.01 et seq., whose purpose is:

> ". . . [To] complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition. It is the intent of the Legislature that this act be liberally construed to accomplish this beneficial purpose." Fla. Stat. 542.16

Nowhere in the Act is the regulation of attorneys exempted. Thus there is no clearly expressed policy that the general grant of power to discipline attorneys in Florida includes the right to regulate attorney fees under the guise of disciplinary rules. This is consistent with this Court's ruling in *Community Communications v. City of Boulder*, 455 U.S. 40, 56, 102 S.Ct. 835, 843 (1982) where it was opined:

> "Acceptance of . . . a proposition — that the general grant of power to enact [regulations] necessarily implies state authorization to enact specific anticompetitive [regulations] — would wholly eviscerate the concepts of 'clear articulation and affirmative expression' that our precedents require***"

The power to discipline granted the Florida Supreme Court must be exercised consistent with the constitution and laws of the State and the Federal antitrust laws which prohibit price-fixing regulations. See, Sherman Act, Sec. 1, 15 U.S.C. Sec. 1. The fee regulation is *per se* a violation of antitrust laws for it sets maximum fees.

Access to Courts: No Justification. Price setting or fixing under any guise is impermissable under the antitrust laws, whether set at maximum or minimum, or a formula is adopted for arriving at the actual price, or the price is fixed or reasonable. Sherman Act, supra; *United States v. Trenton Potteries Co.*, 273 U.S. 392, 47 S.Ct. 377 (1927); *United States v. Socony-Vaccum Oil Co., Inc.*, 310 U.S. 150, 60 S.Ct. 811 (1940); *Kiefer-Steward Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211, 71 S.Ct. 259 (1951). Thus the Bar's fee setting

guidelines for disciplinary purposes are illegal *per se*. See, *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 95 S.Ct. 2004 (1975); *National Society of Professional Engineers v. United States*, 435 U.S. 679, 98 S.Ct. 1355 (1978); *Tex. St. Bd. of Public Accountancy*, supra; *Arizona v. Maricopa County Medical Society*, 457 U.S. 332, 107 S.Ct. 2466 (1982). This Court has established that any agreement or plan designed to stabilize prices indirectly is illegal *per se*, even if no actual price is fixed:

> "Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, *fixing*, *pegging*, or *stabilizing* the price of a commodity. . . is illegal per se." [Emphasis Supplied] *Keifer-Stewart Co.*, supra, 340 U.S. at 213, 47 S.Ct. at 260.

See also, *Tex. St. Bd. of Public Accountancy*, supra. Recently, this Court dealt with this issue of social justification for antitrust behavior and stated:

> "Social justifications proffered for . . . restraint of trade . . . do not make it less unlawful. The statutory policy underlying the Sherman Act 'precludes inquiry into the question whether competition is good or bad.' *** '[I]t is no excuse that the prices fixed are themselves reasonable.'
>
> * * *
>
> "In sum, price-fixing . . . [is] . . . condemned per se because the conduct is . . . very dangerous to society. The conceivable social benefits are few in principle, small in magnitude, speculative in occurence, and always premised on the existence of price-fixing power which is likely to be exercised adversely to the public. *** " *FTC v. Superior Court Trial Lawyers Assn.*, _ _ _ U.S. _ _ _, 110 S.Ct. 768, 58 L.W. 4145, 4149 and 4151 n. 16 (1990).

See also, *Maricopa County Medical Society*, supra. ["(P)ublic service or ethical norms" nor lower fees justify antitrust behavior.] Courts do not inquire into the "social utility or political wisdom of price-fixing agreements" in antitrust cases. See, *Superior Court Trial Lawyers Assn.*, supra, _ _ _ U.S. _ _ _, 110 S.Ct. 768, 58 L.W. at 4148 (1990).

To suggest that the Bar is not a combination or that the disciplinary rule is not aimed at competition, or that the Bar cannot control the market, or that the fee set by the regulation is reasonable, are all without merit in an antitrust case. The Bar grievance procedure is a "primarily self operated lawyer disciplinary system". See, *The Fla. Bar re Amendments to the Rules Regulating the Florida Bar (Grievance Procedures and Confidentiality)*, 558 So.2d 1000, 1005 (Fla., 1990). Attorneys are involved in the "show cause" phase of the grievance procedures, and where the fee for legal services rule applies, attorneys of "ordinary prudence" must conclude that the fee was "in excess of a reasonable fee". Clearly a combination exists. See, *Tex. St. Bd. of Public Accountancy*, supra, 464 F.Supp. at 403. In *Socony-Vaccum Oil Co.*, supra, this Court held:

> "Price-fixing agreements may or may not be aimed at complete elimination of price competition. The group making those agreements may or may not have the power to control the market. But the fact that the group cannot control the market prices does not necessarily mean that the agreement as to prices has no utility to the members of the combination. The effectiveness of price-fixing agreements is dependent on many factors, such as competitive tactics, position in the industry, the formula underlying pricing policies. Whatever economic justification particular price-fixing agreements may be thought to have, *the law does not permit an inquiry into their reasonable-*

> *ness.* They are banned because of their actual or potential threat to the central nervous system of the economy." 310 U.S. 150, 255-226 n. 59, 60 S.Ct. at 845 n. 59 (1940) [Emphasis Supplied].

Thus, any tampering with the price structure is illegal and no formal agreemnet is necessary. *American Tobacco Co. v. U.S.*, 328 U.S. 781, 66 S.Ct. 1125 (1946). The fee setting guidelines of the Bar's disciplinary rules as applied to the accused attorney fee agreements with his private clients violate the antitrust laws and are illegal *per se* as a restraint upon trade.

"Officer of Court": No Justification. The Florida Supreme Court's justification for regulating attorney fees is that they are:

> ". . . [a] very important factor in the administration of justice, and if not determined with proper relation to that fact results in a species of social malpractice that undermines the confidence of the public in the bench and bar": *The Fla. Bar v. Richardson,* supra, Appx. at a-6.

citing, *Barch v. Giblin,* 164 So. 831, 833 (Fla., 1931)] and that the lawyer is an "officer of the court and subject to its orders" *[Richardson,* Id.]. Again, such social justification for antitrust behavior has been consistently rejected by this Court as previously stated. Furthermore, the Court in *Supreme Court of N.H. v. Piper,* 470 U.S. 274, 105 S.Ct. 1272 (1985) concluded that:

> "[A] lawyer is not an 'officer' within the ordinary meaning of that word. (citation omitted). He 'makes his own decisions, follows his own best judgment, collects his own fees and runs his own business. (citation omitted) . . . [T]he state powers entrusted to lawyers do not 'involve matters of state policy or acts of such unique responsibility . . . .'" 420 U.S. at 283, 105 S.Ct. at 1278.

"[L]awyers are not in any sense officials in government simply by virtue of being lawyers". Id., at n. 15.

The disciplinary rule governing fees for legal services violates antitrust laws and the Florida Supreme Court should have invalidated the regulation under the decisions of this Court and those of the 5th Circuit and the D.C. Circuit and therefore its decision in this case conflicts with such rulings and the writ should issue for that reason alone.

3. *Fee Regulation is Unconstitutionally Vague.*

The challenged regulation on lawyer fees is said to be vague under the 14th Amendment since the reasonableness of the fees relates to unascertainable standards tainted with anticompetitive considerations in that the charging of a "clearly excessive fee" for which an attorney can be disciplined is a fee that, "(w)hen, after review of the facts, a *lawyer of ordinary prudence* would be left with a firm conviction that the fee is *in excess of a reasonable fee"*. [Emphasis Supplied] DR 2-106, supra. Furthermore, one of the numerous factors to be considered by the lawyer when setting a fee is "(t)he fee customarily charged in the locality for similar legal services" Id, at (B)(3). The Supreme Court of Florida has recognized that "opinions of reputable lawyers concerning what constitutes a reasonable fee in any given situation often are far apart as the poles". See, *The Fla. Bar v. Wynn,* 208 So.2d 800 (Fla., 1968). The Bar regulation on legal fees is facially void for vagueness since the reasonableness of the fee relates to unascertainable standards, two of which are the "lawyer of ordinary prudence" and the fixed or hourly rates "customarily" charged for "similar legal services". See, *Coates v. City of Cincinnati,* 402 U.S. 611, 91 S.Ct. 1686 (1971); *United States v. L. Cohen Grocery Co.,* 255 U.S. 81, 41 S.Ct. 298 (1921); *Connally v. General Construction Co.,* 269 U.S. 385, 391, 46 S.C. 126 (1925). "The Fourteenth

Amendment's Due Process Clause 'insist[s] that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.' *Grayned v. City of Rockford,* 408 U.S. 104, 108-109, 92 S.Ct. 2294, 2298-2299 (1972). **** These guarantees apply fully to attorney disciplinary proceedings. *In re Ruffalo,* 390 U.S. 544, 550, 99 S.Ct. 1222, 1225 (1968) *** '' See, *Zauderer v. Ofc. of Disciplinary Counsel, Sup. Ct. of Ohio,* 471 U.S. 626, 666, 105 S.Ct. 2265, 2289 (1985) where this Court held:

> ''(W)here '(t)he appraisal of [an attorney's] conduct is one about which reasonable men differ, not one immediately apparent to any scrupulous citizen who confronts the question,' and where the State has not otherwise proscribed the conduct in reasonably clear terms, the Due Process Clause forbids punishment of the attorney for that conduct. [*In re Ruffalo,* supra,] at 390 U.S. at 555-556, 88 S.Ct., at 1128-1129''.

''In addition to ensuring fair notice, vagueness doctrine also guards against 'harsh and discriminatory enforcement . . . against particular groups deemed to merit [official] displeasure.''' *Zauderer,* supra, 471 U.S. at 667 n. 10, 105 S.Ct. at 2290, n. 10. *Papachristou v. City of Jacksonville,* 405 U.S. 156, 170, 92 S.Ct. 839, 847 (1972) (citation omitted); See also, *Kolender v. Lawson,* 461 U.S. 352, 358, 103 S.Ct. 1855, 1859 (1983). ''Some commentators have suggested that vague disciplinary rules have been used as tool for singling out unorthodox and unpopular attorneys for sanction.'' *Zauderer,* Id.; See, e.g., Comment, ''Controlling Lawyers by Bar Associations and Courts'', 5 Harv.Civ.Rts.-Civ.Lib.L.Rev. 301, 312-314 (1970); Comment, ''The Privilege Against Self-Incrimination in Bar Disciplinary Proceedings: What Ever Happaned to *Spevak*?'', 23 Vill.L.J. 127, 135-136 (1977). In the accused attorney's case there was conflicting testimony on the

issue of the excessive nature of the fees charged given by attorneys of "ordinary prudence"; further, the accused attorney never knew that charging in 20 minute billable units, or fixed per page charge for legal and non-legal documents, or having an "office cover charge", a percentage of the service fee covering certain overhead expenses, [See, *Fla. Bar v. Richardson*, Appx. a-7] violated the Bar's regulation on excessive fees, only in retrospect does the accused attorney know that such actions would subject him to discipline in Florida. The regulation is thus vague and unenforceable and The Florida Supreme Court's contrary decision conflicts with this Court's on the subject.

3. *Disciplinary Proceedings Violate Due Process and Equal Protection Guarantees*

(Grievance Panel Excluded African-Americans and Bar's Counsel Had *Ex Parte* Contact with Panel. That a "fair trial in a fair tribunal is a basic requirement of due process" goes without argument. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955). This applies to administrative agencies which adjudicate as well as to courts. *Gibson v. Berryills*, 411 U.S. 564, 579, 93 S.Ct. 1689, 1698 (1973). "Not only is a biased decision maker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.'" *In re Murchison*, supra; *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464 (1975).

The 5th and 14th Amendments of the U.S. Constitution assures that an attorney in a disciplinary proceeding be charged by a grievance committee panel that is a fair representation of a valid cross-section of the community. See, *Neal v. Delaware*, 103 U.S. 370, 26 L.Ed. 567 (1881); *Peters v. Kiff*, 407 U.S. 493, 92 S.Ct. 2163 (1972). The Constitution protects an attorney from consideration by a grievance committee panel selected as a result of systematic exclusion or an inten-

tional design or scheme which excludes any identifiable class of persons solely because of that classification. This rationale extends to the situation where a grievance panel will be absent or proportionately lacking members of a cognizable class. *Virginia v. Rives,* 100 U.S. 313, 25 L.Ed. 667 (1880); *State v. Smith,* 262 A.2d 868 (N.J., 1970); *State v. Porro,* 337 A.2d 950 (N.J. Super., 1977). "There is no constitutional tolerance for the systematic and deliberate exclusion of members of any cognizable class, notwithstanding the underlying motive of good faith of those entrusted with the selection process." *Dow v. Carnegie-Ill. Steel Corp.,* 224 F.2d 414 (3rd Cir., 1955); *Crawford v. Bounds,* 395 F.2d 297 (4th Cir., 1968). The Florida Supreme Court found the claim of exclusion of African-Americans without merit and such ruling does not comport with this Court, Federal circuit and the highest State courts who have considered the subject of grand jury compositions. Exclusion of a racial group "not only violates our Constitution and the laws enacted under it, but is at war with our basic concepts of a democratic society". *Smith v. Texas,* 311 U.S. 128, 130, 61 S.Ct. 164, 165 (1940). A selection process which excludes African-Americans from a disciplinary process designed to be inclusive and representative of the legal and lay communities for which it serves, "creates an unconstitutional risk of bias in administrative adjudication *** (and) *** the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Withrow,* supra, 421 U.S. at 47, 95 S.Ct. at 1464.

Deliberations when a finding of probable cause is being made is adjudicatory. The allowance of *ex parte* participation by the Bar counsel in such deliberations is a "special fact or circumstance" that "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." Id. *Ex parte* participation by the Bar's counsel in the deliberations wherein probable cause was considered constituted such a "risk of

actual bias'' or ''probability of unfairness'' that ''special facts and circumstances'' exist which give rise to the inference that the accused attorney was denied a fair and impartial hearing before the grievance panel. Furthermore, the grievance panel member which conducted the investigation voted in the deliberations and prosecuted the case before the grievance panel. The Florida Supreme Court's ruling that such a challenge to the fairness and impartiality of the proceedings were without merit conflicts with this Court's pronouncements on the subject and those of other equivalent State courts.

(b) Discipline Based Upon Void Judgment and Constitutes Property Deprivation. The disciplinary proceedings involved the use of a State probate court's judgment against the accused attorney ordering refund of alleged excessive fees paid by the attorney's clients for services rendered in an estate, not for excessive fees paid from estate funds since the estate at no time during the accused attorney's representation had liquid assets and the legal services agreements were between the accused attorney and his clients and could not under State statute [*See,* Fla. Stat. 733.619] be an obligation of the estate even if the personal representative, who was one of the accused attorney's clients and a co-beneficiary of the estate with his two other siblings, had entered into the legal services agreement in the client's representative capacity. The use of the documentary and testimonial evidence violated the 14th Amendment of the U.S. Constitution and the restitution required by the Florida Supreme Court constitutes a taking in violation of the 5th and 14th Amendments of the U.S. Constitution.

A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 291, 100 S.Ct. 559, 564 (1980). Since 1897 this Court has held to the proposition that:

> "Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law. . . To give such proceedings any validity, there must be a tribunal competent by its constitution — that is the law of its creation — to pass upon the subject matter of the suit; and if that involves merely determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process . . . or . . . voluntary appearance." *Pennoyer v. Neff*, 95 U.S. 714, 732-33, 24 L.Ed. 565, 572 (1897).

The Florida probate court lacked subject matter and personal jurisdiction over the accused attorney. First, "(p)robate proceedings are in rem" under Florida statutes. *See*, Fla. Stat. 731.105. The Supreme Court of California in a case based upon similar facts and law held:

> "It is true he is an attorney of the court and an officer thereof, but that does not deprive him of the equal protection of the law. The judge of the court could not arbitrarily order him to refund a retainer received by him, for the mere reason that in the opinion of the judge, it had not been earned. . . It is a principle that underlies all institutions and forms of government that no man can be deprived of his property, except in a proceeding according to law, unless it be confiscated for the necessities or good of the public." *Tomsky v. Superior Court*, 63 P. 1020, 1021 (Cal., 1901).

See also, *Jackson v. Superior Court*, 290 P. 448 (Cal, 1930) [A probate court being of limited *in rem* jurisdiction cannot

adjudicate private contract rights of attorneys which does not involve estate funds.] Accord, *Spitzer v. Branning*, 184 So. 770 (Fla., 1938). *Chicago B.&O. Railroad Co. v. Chicago*, 166 U.S. 226, 241, 17 S.Ct. 581, 586 (1897). *In re Estate of Lieber*, 103 S.2d 192, 200 (Fla., 1930); Fla. Stat. 733.6175 [''*** Any person who is determined to have received excessive compensation *from an estate* for services rendered may be ordered to make appropriate refunds.'' (Emphasis Supplied)] Second, the Florida probate court did not issue process against the accused attorney according to its own law. Since 1950, this Court has held to the proposition that:

> ''An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of pendancy of the action and afford them an opportunity to present their objections. The notice must be of such a nature as reasonably to convey the required information, and must afford a reasonable time for those interested to make their appearance. *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950)

Accord, *Beck v. Beck*, 383 So.2d 268, 271 n. 6 (Fla. 3rd DCA, 1980) [Attorneys who received compensation from an estate must be noticed and ''joined in the proceedings''.] And, third, when the Florida probate court rendered the judgment, notice was never received from the court by the accused attorney, a resident of District of Columbia and the judgment debtor, before the running of the statute of limitations for appeal. When notice was received by the accused attorney from the attorney for the judgment creditor, the King Estate, the period has run and the intermediate State court of appeals dismissed the appeal as untimely. This lack of notice denied the accused attorney due process of law in contravention of this Court's holdings in *Mullane*

and *Mennonite Bd. of Missions v. Adams*, 462 U.S. 799, 800, 103 S.Ct. 2706, 2712 (1983) where this Court held:

> ". . . [A]ctual notice is a minimum constitutional precondition to a proceeding which will adversely affect the . . . property interest of any party, whether unlettered or well versed. . . . if its name and address are reasonably ascertainable."

and *Tulsa Prof. Collection Svcs., Inc. v. Pope*, 485 U.S. 748, 108 S.Ct. 1340, 1348 (1988) [If a judgment debtor's identity is known or "reasonably ascertainable", then the Due Process Clause requires that the debtor be given "(n)otice by mail or other means as certain to ensure actual notice".]

The restitution to the King Estate in which some services were rendered under the representation agreements with the clients required by the Florida Supreme Court as a condition for reinstatement of the accused attorney exceeds the consideration paid by the clients under the legal services agreements, excluding all attorney fees required to be paid as sanctions. This means that the accused attorney has received nothing for any services rendered the clients and in the estate for every dime received is to be repaid plus an additional sum. The Florida Supreme Court has thereby deprived the accused attorney of a valuable property right, his consideration under the contract, in contravention of Federal constitutional and civil rights laws. The license to practice law is a property interest protected from deprivation under the 5th and 14th Amendments and the Civil Rights Laws (42 U.S.C. Sec. 1983). Thus, an attorney has a protected property interest in contracting his services to the general public. *Leis v. Flynt*, 439 U.S. 438 (1979) ["A lawyer's interest in pursuing his calling is protected by the Due Process Clause of the 14th Amendment."] Interference, impairment, deprivation or any unlawful restraint of that freedom to contract is actionable under Federal constitutional and statutory

law and general common law principles governing monopolistic behavior. See, e.g. *Chicago, B.&O. Railroad Co.*, supra, holding:

> ". . . (A) judgment of a state court, even if it be authorized by statute, whereby private property is taken. . . under [the State's] direction. . . without compensation made or secured to the owner, is upon principle and authority wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest court of the State is a denial by the State of a right secured to the owner by that instrument."

Discipline may not be based upon matters resolved in judicial proceedings if the procedure was so deficient as to constitute a deprivation of due process, there was an infirmity of proof, or a grave injustice would be committed. *Selling v. Radford*, 243 U.S. 46, 37 S.Ct. 377 (1917); *Wrighten v. U.S.*, 550 F.2d 990 (4th Cir., 1977) Aspects of each of these factors are present in this case — exclusion of African-Americans from the grievance committee, participation in the deliberations by the investigting panel member and the counsel for the Bar, use of evidence from a jurisdictionally defective probate court proceeding, requiring payment of the *ultra vires* judgment, requiring restitution of an amount which exceeds the consideration paid under the contract plus attorney fees for resisting the *ultra vires* proceedings, denial of a right to trial by jury and to appeal — which conflict with established principles of this Court and other highest State courts and Federal appeals courts. Thus, the imposition of discipline by the Florida Supreme Court is in conflict with the long held principles of the 5th and 14th Amendments and Civil Rights laws regarding deprivation of property rights.

4. Denial of Opportunity to Be Heard.

Upon review of the Referee's oral ruling and written report, the Florida Supreme Court in changing the discipline imposed from a public reprimand to 91-day suspension made *de novo* factfindings some clearly erroneous, necessitating two revisions to its opinion, and others upon contested fact issues. No opportunity was accorded to Petitioner to be heard in opposition to the facts or the modification of the discipline prior to its imposition. Some of the factual determinations involved weighing the testimony of witnesses and not just interpretation of written documents and other determinations involved mixed evidentiary conclusions to be drawn from documents and testimony. "The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied, and whether the proceedings in which facts were adjudicated was conducted regularly." *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 56 S.Ct. 720 (Justice Frandeis, concurring, 1936). To summarily conclude facts and change the discipline imposed to a greater penalty resulting in suspension of Petitioner's license to practice and thus loss of income without providing an opportunity to be heard denies the Petitioner due process under the 14th Amendment.

5. Cost Allowance Regulation Unconstitutional.

The Bar regulation allowing costs to the Bar if successful but denying it to the accused attorney if successful denies due process of law or equal protection of the laws. See, Appx. a-37; Cf., *Atkinson v. Woodmansee*, 68 Kan. 71, 74 P. 640 (1903) This cost regulation is void on its face and as applied. In this instance, the Bar was awarded a judgment for costs of $5,145 (Five Thousand One Hundred and Forty-Five Dollars) against the Petitioner as the successful litigant. Had the Petitioner prevailed the costs would not have been allowed. Furthermore,

other regulated professionals and other licensees in Florida do not have to pay a judgment for costs if disciplined, only a fine up to $1,000 (One Thousand Dollars) per violation. See, Fla. Stat. 455.225 ("Disciplinary Proceedings"), which states:

> "The board shall have the power to revoke, suspend, or deny the renewal of the license, or to reprimand, censure, or otherwise discipline a licensee ***. In addition to, or in lieu of, any other discipline imposed pursuant to this section, the board may impose an administrative fine not to exceed $1,000, for each violation.***"

Clearly attorneys are treated differently from other professionals or licensees since they must pay a judgment for costs if unsuccessful, while other professionals or licensees pay nothing. Since the Petitioner was found guilty of violating only one rule regarding charging an excessive fee, had Petitioner been a doctor or other licensee, the penalty would not have exceeded $1,000 (One Thousand Dollars), thus for being an attorney, the Petitioner must pay an additional $4,145 (Forty-One Hundred and Forty-Five Dollars), four times as much! There is no rational reason why attorneys are treated differently from other regulated licensees. This lack of equality between parties in the regulatory process (i.e. the Bar as complainant, and the accused attorney as respondent) and among regulated licensees (attorneys, doctors, etc.) is constitutionally impermissable as a denial of due process and equal protection under the 14th Amendment of the Federal Constitution.

CONCLUSION

For the reasons that the Florida Supreme Court's disciplinary action against the Petitioner constitutes impermissive antitrust behavior, is based upon regulatory provisions void for vagueness or lacking in equality of treatment where imposition of costs are concerned between the contesting parties and

between the accused attorney and other state licensees, was imposed under proceedings lacking in substantive and procedural due process because of the exclusion of African-Americans from the grievance process through a *de facto* discriminatory selection process, the participation *ex parte* by the Bar's counsel in the show cause deliberations of the grievance committee after the hearing, the use of a state court judgment rendered against the accused attorney without subject matter or personal jurisdiction involving a lack of the judgment's notice preventing appeal, the imposition of restitution which deprived the accused attorney of any compensation under his employment agreement plus required him to pay additional amounts above that received under the employment agreement (not including attorney fee sanctions), and involving appellate factfinding and changes in discipline resulting in a deprivation of property without according the accused attorney a right to be heard prior to the *de novo* factual determinations and property depriving changes in the discipline imposed. The disciplinary order conflicts with antitrust and civil rights statutes and with judgments of other State courts of last resort, Federal appeals courts, and of this Court and therefore, this Court should grant this petition for writ of certiorari to review the judgment of the Supreme Court of Florida in this case.

Respectfully submitted,

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No.

United States Supreme Court

October Term, 1990

T. CARLTON RICHARDSON,
Petitioner,

vs.

THE FLORIDA BAR, an agency of
THE SUPREME COURT OF FLORIDA,
Respondent.

APPENDIX

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APPENDIX INDEX

Page

EXHIBIT "A": JUDGMENT FOR REVIEW a-1

1A: *The Fla. Bar v. Richardson*, No. 73,214 (Fla., April 19, 1990) (Rev. *nuc pro tunc* February 14, 1991) a-1

2A: Order Denying Rehearing, Id. (February 14, 1991) a-9

EXHIBIT "B": SUBSIDIARY AND COMPANION DECISIONS a-10

1B: "Report of Referee", *Richardson*, Id., (Penick, Ref., August 29, 1989) a-10

2B: Oral Ruling of Referee, *Richardson*, Id., Final Hearing Transcript at 460-467 (Penick, Ref., July 21, 1989) a-15

3B: "Amended Order on Refund of Attorney Fees", *Estate of Leula King, Deceased*, No. 84-00732 Div. "A" (Alvarez, J., September 15, 1988) ... a-20

4B: *Richardson v. Jones*, 508 So.2d 739 (Fla. 2nd DCA, 1987) a-22

5B: "Order Granting Motion for Reimbursement of Excess Attorney's Fee. . ." (As Amended April 16, 1986) *Estate of Leula King, Deceased*, supra, (Alvarez, J., March 18, 1986) a-24

EXHIBIT "C": CONSTITUTIONS, STATUTES, REGULATIONS a-28

1C: 5th Amendment, U.S. Constitution a-28

2C: 14th Amendment, U.S. Constitution a-28

3C: Sec. 1, Sherman Act, 15 U.S.C. Sec. 1 ..... a-28

4C: 42 U.S.C. Sec. 1983 ..... a-28

5C: Fla. Const., Art. 5, Sec. 15 ..... a-29

Page

6C: Fla. Stat. Sec. 454.021(1)(2) a-29

7C: Fla. Stat. Sec. 454.11 ..... a-29

8C: Fla. Stat. Sec. 455.201(1), (3) a-29

9C: Fla. Stat. 542.16 ..... a-30

10C: Fla. Stat. Sec. 731.105 ..... a-30

11C: Fla. Stat. Sec. 733.6175 ..... a-30

12C: Fla. Stat. Sec. 733.619(1), (3) a-30

13C: Florida Code of Professional Responsibility, DR 2-106 (A) and (B) a-31

14C: Florida Bar Rules re Legal Fees, Sec. 4-1.5 ..... a-32

15C: Florida Bar Rules re Costs Allowance, Sec. 3-7.5 K(1)(5) a-37

EXHIBIT "D": RECORD RE RAISING FEDERAL QUESTIONS a-38

1D: Transcript of Preliminary Motions Before Referee *Richardson*, supra, No. 73,214, Transcript of Final Hearing at 3-23. (July 20, 1989) a-38

2D: Preliminary Motions (. . . To Dismiss or Summary Judgment; Exclude Evidence; . . .) Id. (June 5, 1989) a-47

3D: Preliminary Motions re Impartial Tribunal, Strike Panel Members *The Fla. Bar v. Richardson*, No. 86-19,522 [13C] (May 20, 1988) a-49

4D: Motion for Summary Dismissal Id (May 20, 1988) a-53

EXHIBIT 1A

SUPREME COURT OF FLORIDA

No. 73,214

THE FLORIDA BAR, Complainant,

vs.

T. CARLTON RICHARDSON, Respondent.

[April 19, 1990]
REVISED OPINION

PER CURIAM.

T. Carlton Richardson, a Florida Bar member who practices law in Washington, D.C., petitions this Court to review the referee's recommendation that he be given a public reprimand and placed on probation for six months for charging excessive attorney's fees. We have jurisdiction. Art. V, § 15, Fla. Const. For the reasons expressed, we approve the referee's findings of fact, yet find, based on the circumstances detailed below, that a ninety-one-day suspension is the more appropriate sanction.

The record indicates that on March 31, 1983, Roosevelt Jones, a seventy-four-year-old retired longshoreman, and his seventy-three-year-old wife retained Richardson to probate the estate of Leula King in Tampa, Florida. Jones agreed to pay Richardson a $500 origination fee and ten percent of the estate's gross value. The parties agreed that the origination fee would be applied toward that percentage. Nothing in the agreement indicated whether the percentage of the estate's gross value was

a minimum and the agreement did not provide for an hourly rate. King's estate was not complex, consisting of one piece of real property valued at approximately $22,000. King had died approximately fifty years earlier and had no outstanding debts. Between February 24, 1984, and July 5, 1985, Richardson prepared the necessary documents to carry out the probate of King's estate. For this work, Richardson charged the Joneses $10,550.99. In this disciplinary proceeding, Richardson testified that a portion of the legal fees represented a monthly cover charge which he imposed on all of his clients to permit him to provide pro bono legal assistance, that he charged the Joneses a minimum of twenty minutes per phone call even if no one answered the phone so long as an effort was made to reach them, and that he billed the Joneses a minimum of forty-five minutes per page for documents he prepared.

When Richardson realized that the Joneses did not have the cash to pay the attorney's fees but had a mortgage-free residence, he suggested that they obtain a loan and assisted them in obtaining one from Community Federal Savings and Loan Association of Tampa. A substantial portion of the $13,000 loan was used to satisfy Richardson's fees.

Subsequently, Mrs. Jones consulted with another attorney, who advised her, along with her husband, that Richardson's fees were excessive. After the couple advised Richardson that they were terminating their relationship, Richardson withdrew as counsel. The Joneses retained another lawyer to complete King's estate and seek reimbursement of the attorney's fees paid to Richardson. At a hearing in the Hillsborough County Circuit Court, Probate Division, the Honorable Dennis Alvarez heard expert testimony and determined that $2,500 was a reasonable fee in the probate case and that $150.29 was the amount of costs incurred. He then directed Richardson to make restitution for all money received in excess of $2,650.29. The

Second District Court of Appeal affirmed, *Richardson v. Jones*, 508 So. 2d 739 (Fla. 2d DCA), *review denied*, 518 So. 2d 1277 (Fla. 1987),[1] but remanded the cause for a recalculation of the fees paid by the Joneses. On remand, Judge Alvarez determined that the Joneses had paid $10,550.99 for the work completed on King's estate. After subtracting $2,650.29 as reasonable attorney's fees and costs, he found that Richardson was required to reimburse King's estate $7,970.[2] The court also required Richardson to reimburse King's estate $6,500 for the expense the estate incurred in defending itself regarding the excessive attorney's fees before the probate court and the Second District Court of Appeal and $1,000 for fees incurred in the two proceedings before this Court. A final judgment for $15,670, plus interest, was entered against Richardson on behalf of the estate. The Second District Court of Appeal rejected Richardson's appeal of this judgment as not being timely filed.

In addition to employing Richardson to probate the estate the Joneses employed him to prepare their wills. The couple's combined income at that time was less than $14,000 and their gross estate was worth no more than $75,000. The Joneses agreed to pay Richardson $85 for the initial consultation, a $750 origination fee, and a minimum attorney's fee of $1,250. No hourly rate was established. The Joneses paid Richardson $1,444.93 for these services. Richardson also sent the Joneses an invoice for $1,273.97 for general services, charging them for, among other things, a finder's fee associated with assisting Mrs. Jones in obtaining the loan to pay his fees.

---

[1]This Court also denied Richardson's petition for a writ of mandamus in Richardson v. Alvarez, 525 So. 2d 880 (Fla. 1988).

[2]This figure is taken from the trial court's amended order on refund of attorney's fees in In Re Estate of Leula King, Deceased, No. 84-00732 (Fla. 13th Cir. Ct. Sept. 15, 1988).

After a complaint was filed against Richardson, he argued that the grievance committee lacked impartiality since the panel excluded black persons. Both the grievance committee and the referee denied this challenge. We note that, during the course of his argument before the referee, Richardson stated: "I am not arguing, Your Honor, that the men and women who sat on the panel did not give their best, I am not arguing that they were in any way prejudiced towards me."

The referee heard expert testimony concerning the reasonableness of the legal fees. That witness testified that (a) $2,500 is perhaps a generous fee for the probate of King's estate; (b) $400 is a generous fee for the work performed on the Joneses' wills; and (c) $200 or $300 is sufficient for the general services. On cross-examination by Richardson, the expert stated that "[b]illing hourly rates is not . . . necessarily a measure of what is a reasonable fee in a given case," explaining that *"the time is not necessarily the time devoted, it's the time that reasonably should be devoted to accomplish a particular task."* (Emphasis added.) He further stated that this was an uncomplicated probate matter.

The referee found that Richardson charged his clients fees which were clearly excessive in violation of The Florida Bar Code of Professional Responsibility, Disciplinary Rule 2-106 (a lawyer shall not charge a client a clearly excessive fee). The Bar argued that a ninety-one day suspension was an appropriate penalty for Richardson's actions. The referee recommended the following discipline for Richardson:

> [A] public remand; six (6) months of probation, said probation to be supervised by The Florida Bar; enrollment in and completion of 12 hours of [accredited] courses on attorney billing and fee practices; proof to The Florida Bar at the end of said six (6) month probation period that the respondent has been re-

> habilitated in the area of billing and fee practices (said proof to be [to] the satisfaction of The Florida Bar to include, if necessary, retaking the bar exam on the subject of professional ethics); payment of restitution in an amount determined by The Honorable F. Dennis Alvarez; and pay the costs of these proceedings.

The referee made this recommendation after finding the following mitigating factors:

> [T]he respondent was a young, hard-working attorney who had never been disciplined previously . . . . He presented an outstanding resume and had in the past devoted many hours to teaching and promoting the practice of law. . . . He made a serious error in judgment and let greed force him off the correct professional path. He certainly possesses all of the qualities to be rehabilitated.

Richardson raises the following issues: (1) whether the use of illegally obtained evidence by the grievance committee panel and the referee violated Richardson's due process rights; (2) whether the expert witness should have been disqualified on conflict of interest grounds; (3) whether the expert witness's testimony was reliable; (4) whether there is a sufficient factual predicate upon which misconduct can be found, applying the clear and convincing standard of proof; (5) whether the referee abused his discretion in failing to make specific findings of fact regarding excessive legal fees; (6) whether the exclusion of black persons from the grievance committee denied Richardson his due process rights; (7) whether the Bar counsel's participation in the deliberations of the grievance committee after the hearing without the presence of either Richardson or his counsel violated Richardson's due process rights; (8) whether the standard for determining excessive fees is unconstitutionally vague; (9) whether the standard as applied constitutes an

impermissible restraint of trade in violation of federal antitrust laws; (10) whether the referee's sanction of a public reprimand is reasonable; (11) whether Richardson was given adequate notice and an opportunity to be heard regarding the costs imposed; and (12) whether the costs were permissible or reasonable under the circumstsances. We find each of these claims to be without merit.

This Court stated:

> Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. *The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of special malpractice that undermines the confidence of the public in the bench and bar.* It does more than that; it brings the court into disrepute and destroys its power to perform adequately the function of its creation.

Baruch v. Giblin, 122 Fla. 59, 63; 164 So. 831, 833 (1935) (emphasis added). Mr. Richardson is an officer of the court, subject to its orders. We find that these were clearly excessive fees and that the amounts he charged did in fact constitute a "social malpractice." The Florida Bar Code of Professional Responsibility, Disciplinary Rule 2-106, entitled "Fees for Legal Services," provides, in pertinent part:

> (A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
>
> (B) *A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.*

(Emphasis added.) Ethical Consideration 2-17 of the Model Code of Professional Responsibility explains that a lawyer must charge clients reasonable fees because the "excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights." This Court recognizes that a lawyer's fee will vary in accordance with many factors; however, we fully concur with the expert witness's statement in this case that all of the time a lawyer spends on a case is not necessarily the amount of time for which he can properly charge his client. As explained by the expert witness, "[I]t's the time that reasonably should be devoted to accomplish a particular task." This statement is consistent with the principles we set forth in *Standard Guaranty Insurance Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990), and *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), neither of which allows billing clients solely on billable hours or charging clients without determining what is the reasonable time to accomplish a particular task. Further, absolutely no justification exists to bill for twenty minutes for every phone call or for a minimum of forty-five minutes to prepare a page of a document without regard to the amount of time actually spent. Nor is it proper to bill clients for pro bono services to be rendered to others.

The significant factors in determining a reasonable fee in this case include the amount involved and the benefit to the client, neither of which is disputed. Particularly important is the amount of time that should have been devoted to accomplish these particular tasks. We find that any prudent lawyer would find that the fees in this case were clearly excessive.

We find that Richardson's misconduct was not minor and that the appropriate discipline should be a ninety-one-day suspension with reinstatement after proof of rehabilitation and a two-year probationary period following reinstatement. In accordance

with the referee and the probate court decision, we find that Richardson must pay the final judgment of $15,470, plus interest, prior to reinstatement.

Accordingly, we suspend T. Carlton Richardson from the practice of law for ninety-one days commencing May 21, 1990, thereby giving Richardson thirty days to take the necessary steps to protect his clients. Richardson shall accept no new business after the date of this opinion. Judgment for costs in the amount of $5,144.81 is entered against T. Carlton Richardson, for which sum let execution issue.

It is so ordered.

EHRLICH, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS SUSPENSION.

John F. Harkness, Jr., Executive Director and John T. Berry, Staff Counsel, Tallahassee, Florida; and Bonnie L. Mahon, Assistant Staff Counsel, Tampa,Florida,

for Complainant

T. Carlton Richardson, in proper person, Washington, D.C.; and Daniel A. Medeiros, Co-Counsel, Tampa, Florida,

for Respondent

EXHIBIT 2A

SUPREME COURT OF FLORIDA

THURSDAY, FEBRUARY 14, 1991

THE FLORIDA BAR, Complainant,

vs. Case No. 73,214

T. CARLTON RICHARDSON, Respondent.

* *

The Motion for Rehearing for reconsideration of corrected opinion released April 19, 1990, having been considered in light of the revised opinion, is hereby denied.

A True Copy
TEST:
/s/ Sid J. White
Clerk, Supreme Court
[Seal - Supreme Court of the State of Florida]

JB
cc: Hon. Thomas E. Penick, Jr., Referee
T. Carlton Richardson, in proper person
Daniel A. Medeiros, Esquire
Bonnie L. Mahon, Esquire
John T. Berry, Esquire

EXHIBIT 1B

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 73,214
TFB No. 86-19,522 (13C)

v.

T. CARLTON RICHARDSON,
Respondent.
_____/

REPORT OF REFEREE

I. *Summary of Proceedings:* Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Integration Rule of The Florida Bar and Rule 3-7.5 Rules of Discipline, a final hearing was held on Thursday and Friday, 20-21 July, 1989. The enclosed pleadings, orders, transcripts and exhibits are forwarded to the Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar:	Ms. Bonnie L. Mahon
For the Respondent:	T. Carlton Richardson and Daniel A. Medeiros

II. *Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged:* After considering all the pleadings and evidence before me, I find the respondent has violated The Florida Bar Code of Professional Responsibility in the following respect: *that the Respondent, T. Carlton Richardson, violated the Disciplinary Rule of the Code of Professional Responsibility: DR 2-106 by charging his clients a clearly excessive fee. Mr. Richardson did have contracts with the clients for the services he was to perform. He did review the contracts with his clients.*

He rendered timely and detailed statements for services rendered to the clients.

Mr. Richardson's resume and professional endeavors in the practice of law are impressive. His record in the law profession is void of any prior disciplinary actions. However, in this case, Mr. Richardson clearly failed to balance the value of the services performed and the ability of his clients to pay for the services.

Unfortunately, today many young attorneys do everything right as far as having contracts with their clients, review the contracts with the clients, keep detailed time records, regularly bill the client, and perform the services requested, but they fail when they attempt to extract fees that exceed 10-15 percent of their clients' total net worth. There must be a standard of reasonableness when billing clients. You cannot charge a client for a phone call when they are not home to answer your call (as was the case herein). You can perform the same detailed service for a rich man and a man of meager means, but you cannot bill them at the same rate.

T. Carlton Richardon's fees were clearly excessive in this case.

III. *Recommendation as to Whether or Not the Respondent Should Be Found Guilty:* I find that the respondent be found guilty of the following violations of the Code of Professional Responsibility: That T. Carlton Richardson has violated the following Disciplinary Rules:

(list DRs)

DR 2-106 Charging Client a Clearly Excessive Fee

IV. *Recommendaiton as to Disciplinary Measures to be Applied:* I recommend that T. Carlton Richardson be disciplined by *a Public Reprimand; six (6) months of probation, said probation to be supervised by The Florida Bar; enrollment in and completion of 12 hours of credited courses on attorney billing*

and fee practices; proof to The Florida Bar at the end of said six (6) month probation period that the Respondent has been rehabilitated in the area of billing and fee practices (said proof to be at the satisfaction of The Florida Bar to include, if necessary, retaking the Bar Exam on the subject of Professional Ethics); payment of restitution in an amount determined by The Honorable F. Dennis Alvarez; and pay the cost of these proceedings in the amount set forth in the AMENDED STATEMENT OF COSTS attached to this Report of Referee, said payment of costs to be completed by the end of Respondent's six-month probation term.

V. *Personal History and Past Disciplinary Record:* After a finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), and Rule 3-7.5(k)(4), I considered *as mitigating factors: (1) the Respondent was a young, hard-working attorney who had never been disciplined previously. (2) He presented an outstanding resume and had in the past devoted many hours to teaching and promoting the practice of law. I felt that T. Carlton Richardson did not warrant a suspension or disbarment from the practice. He made a serious error in judgment and let greed force him off the correct professional path. He certainly possesses all of the qualities to be rehabilitated.*

VI. *Statement of Costs and Manner in Which Costs Should Be Taxed:* I find the following costs were reasonably incurred by The Florida Bar:

See Exhibit A attached hereto and made a part hereof.

Dated this 29th day of August, 1989.

/s/ Thomas E. Penick, Jr.
THOMAS E. PENICK, JR.
REFEREE

Copies furnished to:
T. Carlton Richardson and Daniel A. Medeiros
John T. Berry, Staff Counsel, The Florida Bar
Bonnie L. Mahon

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.

Case No. 73,214
TFB No. 86-19,522 (13C)

T. CARLTON RICHARDSON,
Respondent.

AMENDED STATEMENT OF COSTS

1. Administrative costs $500.00

2. Staff Counsel Expenses: (Bonnie L. Mahon - Grievance Committee Hearing 5/26/88)
   a. Transportation (20 miles @ $.29) 5.80
   Motion Hearing (12/27/88)
   b. Transportation (68 miles @ $.30) 20.40
   c. Parking 1.00
   Hearing (2/22/89)
   d. Transportation (38 miles @ $.30) 11.40
   e. Meals and Parking 7.75
   Review Probate File (4/10/89)
   f. Transportation (20 miles @ $.30) 6.00
   g. Parking 1.50
   Pre-Trial Conference (7/6/89)
   h. Transportation (38 miles @ $.30)..... 11.40
   i. Meals 7.00
   Interview witness for Final Hearing (7/10/89)
   j. Transportation 24 miles @ $.30 ..... 7.20
   Final Hearing (7/18/89)
   k. Transportation (25 miles @ $.30) 7.50
   l. Parking 1.00

3. Court Reporter Costs: (Lee/Dreyer - Grievance Committee Hearing 5/26/88)
   a. Appearance Fee 67.50
   b. Transcript Fee 250.25

4. Court Reporter Costs: (Morgan Morey -
   Motion Hearing 12/27/89)
   a. Appearance Fee 35.00
   Hearing (2/22/89)
   b. Appearance Fee 45.00
   c. Transcript Fee 155.80
   d. Postage 2.00
   Pre-Trial Conference (7/6/89)
   e. Appearance Fee 45.00
   f. Transcript Fee 182.40
   g. Postage 2.00
   Final Hearing (7/20-21/89)
   h. Appearance Fee 365.00
   i. Transcript Fee 1,884.80
   j. Postage 5.00

5. Staff Investigator Costs: (Martin Egan)
   a. Time Expended (70.3 @ $16.00) 1,124.80
   b. Mileage (380 miles @ $.30) 114.00

6. Clerk of the Circuit Court: (Richard Ake)
   a. Copying charges 43.00

TOTAL AMOUNT DUE TO DATE: $4,909.50

The foregoing costs have been incurred in the above-styled cause at the Grievance Committee and Referee level by The Florida Bar.

DATED this 23rd day of August, 1989.

Respectfully submitted,

/s/ Bonnie L. Mahon
Assistant Staff Counsel
The Florida Bar, Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
(Attorney #376183)

EXHIBIT "A" *Page 2 of 2*
/s/ TEP

EXHIBIT 2B

SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Complainant,	)	
vs.	)	**No. 73,214**
T. CARLTON RICHARDSON Respondent	)	

ORAL RULING OF REFEREE
(Transcript of Final Hearing at 458, line 10 to 466)

THE COURT: All right. First I'd like to thank the attorneys for a well-tried and well presented case.

In a way, I'm sorry that this case was a Florida Bar case that was tried here in a Florida Bar room, in a Florida Bar office, in the Tampa International Airport because, to me, as the referee on this case I think that the issue that was litigated here, the subject matter that was presented to me and referee, in my humble opinion, deserves as much space in all the news media as the issue of abortion, the issue of right to die, and the issue of burning the American flag, because this case is about the right to an attorney, how much should that attorney be paid, what should the professional expect as return for his service, and what can every American here in the United States expect in the way of legal representation and the cost they're going to have to pay for it, be it Texaco, Exxon, General Telephone, Time, a Supreme Court justice, even an attorney themselves or Mr. and Mrs. Jones.

This case is interesting, very interesting because we come here as referees, we come here as a human being, with experiences that we've gathered as being judges at the circuit level

for a period of time.

Judge Alvarez was a witness. He came as a judge with judicial experience. And I've certainly seen, over my ten years, hundreds of thousands — I don't want to say that — but thousands of defendants, plaintiffs, petitioners, respondents, people, corporations, from every walk of life and all financial means, racial, sexual and creed. And everybody has expectations of what they want and what they get for what they have.

Now, I think this is a classic case and this could be textbook case. And the reason I say this is because people on each side represent a very representative cross section of America. By that, I mean we've got an attorney with an excellent resume, a lot of experience. The evidence will show the attorney had a good professional approach to the practice of law. There was a definite plan for a office practice, there was no indication or sloppiness or laziness. The clients represented, within themselves, sort of an interesting cross section of the spectrum.

Mr.Jones only had a fourth grade education.

Mrs. Jones had, in her own words, some college. She has taught music for many years, she's sold insurance and she did seem knowledgeable.

The question becomes at what point did the services rendered, even if they were excellent and superb services, without question, and every law professor in this country could agree that's the only legal way to have handled that matter, at some point there has to be a determination for the value of that product. Certainly the value has to be judged on the market for which it's aimed, and in this case in was the Joneses that came to the attorney and asked for services and not Mr. Steinbrenner. I know this was a classic example of where the services and the market just didn't meet.

Counsel did give them literature. He explained the contracts to them. He had written contracts. That's more than I can say

for most attorneys. There were handouts, there was counseling sessions, and there was an approach to how to handle their needs. And Counsel did explain why he went a formal probate on an estate where the decedent had been dead over 50 years with no conceivable claims against that estate.

But when you look at this in total, this is the classic example in America today where you can't apply the same standards that you'd use for Mr. Steinbrenner to Mr. and Mrs. Jones.

No conceivable way does the evidence that's been presented to this Court here today justify in any stretch of the imagination charging Mr. and Mrs. Jones a flat minimum 45 minutes to prepare a document that, quite frankly, a chimpanzee could be trained to prepare for two banana pellets in three to five minutes. That's 40 minutes of waste there. You can't charge Mr. and Mrs. Jones a telephone charge when they don't answer the telephone.

The fees were clearly and convincingly excessive. And compared to the product or to the people, the clients, I feel, based on my experience of sitting on the probate bench on three tours over in the judicial circuit, twice the probate administrator over there, based on what I saw here, where this was going, the estate would have been worth $500.00 in attorney's fees, open and shut, even with the title work.

And the estate planning, I'll grant you that was a unique approach. I'm more than intrigued by the approach. I may not agree with the expert witness, John Arthur Jones, I see some serious holes in it, I'm not sure it would stand up in Florida today but it's headed in the right direction. I would have probably awarded you about $1,500.00 for that.

Tragically, I find that the attorney, T. Carlton Richardson, applied practices and a professional approach that if the Joneses had been a corporate client or somebody of means other than joint assets between them of $82,000.00 or an estate of $22,000.00, everything would have been all right.

I put the total assets of the Joneses at $82,000 — well, $81,245.00. The total fee charged was $9,462.00. If you charge the total just against their assets, lump it all together, estate and estate planning, it would have been 11.646 percent of their gross assets.

Now, if you put the charge of $8,000.00 against $22,000.00 just on the Estate of Leula King, you're in deep trouble.

I think that this case really and truthfully is a textbook case because what worries me — and Mr. Richardson, I'm not preaching just to you — two weeks ago I stood before the Estate Planning Council in Pinellas County and I warned them about this, and I didn't have you in mind, banks today are in trouble, S and L's are in trouble, especially, but they don't have trusts and probate departments, but our trust and probate department today will not provide services to anybody unless the estate starts somewhere around a half-a-million to a million. That's 90 percent of American out of representation, they're out of help. And tragically, there are millions of people out there that need help.

I don't see any shortfalls in Mr. Richardson's ability to be a good lawyer. I think the problem we have is the problem of epidemic proportions, that we've lost sight of providing a service in helping people that represent the salt of this earth. For our own interest, if you want to call it that, if not selfish both business interest, the business interest, strictly worrying about every sheet of paper, every pencil, every drop of ink. We've lost sight of the end product, the end product that represents love, confidence and understanding to our clients.

I know, and I have it on my wall right where people come into my office, Abe Lincoln's words that the only product a lawyer has to sell is his time. I mainly have that up there to remind people that there's a fine line between your lawyer's time that he provides you as a service and when you suddenly become a nuisance to him, when he can no longer render a

service to you and he can't render a service to his other clients either because you've got him tied up.

You know, when to say all right, I've gotten all I can get out of this case financially, but how can I help my client so that they won't turn me into the Bar and I will retain their goodwill and they'll bring me some more clients, there's no answer to that. There's no answer to the cure of AIDS right now that the general public, at least, knows about. And there's no answer to the abortion issue or any of these other issues.

Doctors, so help me goodness, the doctors got the message. I feel they've gotten the message.

I am afraid that the lawyers and the accountants are on a collision course with destiny until they realize that a Mercedes in every garage and a swimming pool in every condo is not the modern standard.

Now I think one other reason, one other reason that I feel this is a textbook situation, the fee is excessive, clearly and convincing, but I don't see that it was with knowing malice aforethought.

That aggressive business practices — I feel that it's a result of a misconception with the practice of law. And anybody that practices law, especially people that practice probate law today, have got to realize that the days of asking the Court for a percentage of the estate of for expecting their clients to be able to pay for hundreds of hours of service, are gone. That somewhere there has to be a balance of the high standard that the public is going to hold us to, that we're holding the doctors to and the manufacturers and everybody else. It's going to become so expensive that we can't provide it and the public can't afford it. I don't know when that's going to happen.

Thank you.

[END OF COURT'S RULING]

* * * * * *

EXHIBIT 3B

IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, STATE OF FLORIDA
PROBATE DIVISION

IN RE:	)	Case No. 84-00732
	)	Division A
THE ESTATE OF	)	
	)	
LEULA KING, Deceased	)	
	)	

AMENDED ORDER ON REFUND OF ATTORNEY FEES

THIS CAUSE coming on to be heard before me following the Mandate from the Second District Court of Appeal, dated May 29, 1987, and the court, after hearing additional testimony and receiving additional evidence, makes the following findings of fact:

a) That the sum of $10,550.99 was paid to T. CARLTON RICHARDSON for services allegedly performed in the ESTATE OF LUELA KING.

b) That the amount of $2,650.29 was allowed by the court for attorney fees to T. CARLTON RICHARDSON for his services in the ESTATE OF LEULA KING.

c) That the Supreme Court of Florida granted attorney fees to Respondent, ROOSEVELT JONES, in the amount of $1,000.00 pursuant to Order dated November 24, 1987, and June 8, 1988.

d) That there is a complete absence of a justiciable issue of either law or fact raised by the arguments and position of T. CARLTON RICHARDSON in opposing the refund of fees before this court and the Second District Court of Appeal. It is therefore

ORDERED AND ADJUDGED that the ESTATE OF LEULA KING does hereby recover the sum of $7,970.00, representing the sum paid of $10,550.99 less the sum of $2,650.29 which has been allowed previously by the court to RICHARDSON, to accrue interest at the rate of 12% per annum from the date of the first Order of this court, i.e., March 19, 1986, for which let execution issue forthwith. It is further

ORDERED AND ADJUDGED that the ESTATE OF LEULA KING does hereby recover $1,000.00 from T. CARLTON RICHARDSON pursuant to the Supreme Court Orders dated November 24, 1987, and June 8, 1988 for which let execution issue forthwith. It is further

ORDERED AND ADJUDGED that pursuant to Florida Statute Section 57.105, T. CARLTON RICHARDSON is hereby ordered to pay to the ESTATE OF LUELA KING the sum of $6,500 as attorney fees incurred by the ESTATE in its defense against the position of T. CARLTON RICHARDSON before this court and the Second District Court of Appeal in reference to the refund of excessive fees.

ORDERED AND ADJUDGED that the court reserves jurisdiction for the taxation of costs against T. CARLTON RICHARDSON on proper notice and hearing.

/s/ September 15, 1988

/s/ F. Dennis Alvarez
F. DENNIS ALVARES
Judge, Circuit Court

Conformed Copies:

KENNAN GEORGE DANDAR, ESQ.
T. CARLTON RICHARDSON, ESQ.

EXHIBIT 4D

RICHARDSON v. JONES,
508 So.2d 739 (Fla. 2DCA, 1987)

T. Carlton RICHARDSON, Appellant,

v.

Roosevelt JONES, Sr., as Personal Representative of the Estate of Luela King, deceased, Appellee.

No. 86-1025.

District Court of Appeal of Florida,
Second District.

May 29, 1987.

Rehearing Denied June 24, 1987.

SCHEB, Judge.

Attorney T. Carlton Richardson challenges the trial court's order directing him to reimburse the estate of Luela King for excessive attorney's fees he received from the personal representative.

In 1983, Roosevelt Jones, Sr., retained Richardson to render necessary legal services in Jones' administration of the estate of Luela King, deceased. The only asset of the estate was a parcel of real estate which Jones and his wife purchased for $18,000 cash with approval of the court. The trial court found that Richardson had charged excessive attorney's fees and ordered him to return to the estate the sum of $5,368.20, representing the difference between the fees Jones advanced on behalf of the estate, $8,018.49, less costs of $150.29, and the sum of $2,500, which the court determined to be a reasonable fee for Richardson's legal services.

We agree that the court was correct in ordering Richardson to repay excessive fees; however, it appears to us that the trial judge erred in computing the amount of fees paid by Jones. In arriving at the amount of $8,018.49 as having been paid, the trial court apparently totaled the balance figures at the top of each of several invoices which Richardson submitted. Yet, the record reveals these invoices totaled only $6,493.40. While the court's order recites that the parties stipulated that Jones advanced $8,018.49 for attorney's fees, we think the true effect of the stipulation was that Richardson agreed that his invoices to Jones for legal services had been paid in full. Consequently, Richardson must reimburse the estate for the actual sum he received from Jones less the $2,650.29 allowed by the court.

Section 733.6175, Florida Statutes (1985), provides that "Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds." Richardson argues that because he had been paid by Jones personally, rather than having been paid from the estate, the court had no authority to order a reimbursement. We find this argument to be without merit. The court's order simply carries out its obligation to review and determine the reasonableness of compensation to be paid to an attorney for a personal representative. *Sheffield v. Dallas*, 417 So.2d 796 (Fla. 5th DCA 1982). Moreover, Richardson's contention that the trial court violated his constitutional right to a trial by jury in determining the amount of his attorney's fees is devoid of merit. *Mid-Continent Casualty Co. v. Giuliano*, 166 So.2d 448 (Fla.1964).

Affirmed in part, reversed in part, and remanded with directions.

DANARY, C.J., and CAMPBELL, J. concur.

EXHIBIT 5B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

PROBATE DIVISION

IN RE: ESTATE OF:

LEULA KING a/k/a LULA KING,

Deceased.

CASE NO. 84-732
DIVISION A

ORDER GRANTING MOTION FOR REIMBURSEMENT OF EXCESS ATTORNEY'S FEE AND DENYING MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT*

THIS CAUSE came before the Court for hearing on March 10, 1986 on the Motion for Reimbursement Of Excess Attorney's Fee filed by Roosevelt Jones, Sr., Personal Representative, and the Court having reviewed the Motion and Memorandum Of Law filed by the Personal Representative and the Memorandum Of Law and Motion to Dismiss In Opposition To The Motion filed by T. Carlton Richardson, Esq., and having considered the testimony, evidence and arguments of counsel and being otherwise fully advised in the premises, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On or about March 31, 1983, Roosevelte Jones, Sr., the Personal Representative ("Personal Representative") re-

*As amended by Order dated April 16, 1986.

tained T. Carlon Richardson, Esq. (''Richardson'') for legal services in the administration and settlement of this estate. The parties executed a written contract providing that Richardson would be paid an ''origination fee'' of $500.00 and a ''commission'' of 10 percent of the gross amount of the estate.

2. The only asset of the estate was a parcel of real property which the Personal Representative and his wife purchased for $18,000.00 with the approval of the Court by an Order Approving Sale entered herein on November 6, 1985. The Estate now consists of $18,000.00 in cash.

3. Subsequent to March 31, 1985 (sic: 1983) the personal representative received periodic Invoices from Richardson, in connection with the administration of the estate, and advanced to Richardson in his representative capacity as Personal Representative of the estate, the total sum of $8,018.49 for fees and costs in satisfaction of those Invoices.

4. On or about July 17, 1985, the Personal Representative discharged Richardson and retained new counsel.

5. On November 25, 1985, the Personal Representative filed a Petition For Discharge, requesting reimbursement for all fees and costs advanced by him on behalf of the Estate. In response to an objection filed by beneficiaries, and after hearing, this Court entered an Order on Feburary 3, 1986 determining that the sum of $2,500.00 constitutes a reasonable fee for the services by Richardson to the estate and that the estate shall be responsible for only that amount.

6. The attorney's fees advanced by the Personal Representative to Richardson on behalf of this Estate were excessive.

7. Richardson charged for and received attorney's fees in excess of the amount he contracted for.

8. The Personal Representative and his wife who assisted

him in his fiduciary responsibilities in this Estate are both elderly and, unsophisticated in the administration of estates.

9. When the Personal Representative retained Richardson for legal services in connection with the administration of this estate, it was with the expressed understanding that the Personal Representative would be reimbursed for all of his expenses, including attorney's fees, out of the proceeds of the estate with an adjustment for his proportionate share of the expenses as a beneficiary. The Estate thereby became indebted for the total amount of Richardson's fee and costs.

10. All of the services rendered by Richardson as reflected in his Invoices were performed solely for the benefit of the estate, and not for the benefit of the Personal Representative personally.

11. The parties stipulated that the Personal Representative advanced to Richardson the total sum of $8,018.49 for attorney's fees rendered to the estate and costs. The Court calculates that the sum of $7,868.20 represents "attorney fees" and includes those provisions of the invoices reflected as attorney, secretarial and paralegal time, office cover charges, and travel charges; and that $150.29 constitutes costs for copying, mailing and telephone.

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the subject matter and the parties. It is the statutory and inherent obligation of probate courts in the State of Florida to review and determine the reasonableness of compensation paid to attorneys for personal representatives in probate proceedings.

2. Any person who is determined to have received excessive compensation from an estate for services rendered may be

ordered by the Probate Court, to make appropriate refunds in accordance with Florida Statute 733.6175.

IT IS THEREUPON ORDERED AND ADJUDGED:

1. That the Personal Representative's Motion For Reimbursement Of Excess Attorney's Fees is hereby GRANTED.

2. That T. Carlton Richardson's Motion To Dismiss and oral Motion for Summary Judgment is **DENIED.**

3. That T. Carlton Richardson shall return to this estate the total sum of $5,368.20, representing the difference between fees advanced on behalf of the estate by the Personal Representative less costs ($7,868.20), and the sum of $2,500.00 which this Court, on January 10, 1986 determined to be a reasonable fee for the services rendered by Richardson. This refund shall be made within 30 days after the entry of this Order.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, on this 18 day of March, 1986.

/s/ F. Dennis Alvarez
F. DENNIS ALVAREZ
Circuit Judge

Copies to:

Charles R. Wilson, Esq.
T. Carlton Richardson, Esq.
Bruce A. Campbell

EXHIBITS 1C thru 12C

EXHIBIT 1C THRU 12C: CONSTITUTIONS, STATUTES, AND REGULATIONS

Federal Constitution

Exhibit "1C": 5th Amendment:

"No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation."

Exhibit "2C": 14th Amendment:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any state deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Federal Statutes

Exhibit "3C": Sec. 1, Sherman Act, 15 U.S.C. Sec. 1:

"Every . . . combination in the form of trust or otherwise . . . in restraint of trade or commerce among the several States . . . is declared illegal. . .

Exhibit "4C": 42 U.S.C. Sec. 1983:

"Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in a action at law, suit in

equity or other proper proceedings for redress."

Florida State Constitution

Exhibit "5C": Art. 5, Sec. 15:

"Attorneys; admission and discipline.— The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

Florida Statutes

Exhibit "6C": Sec. 454.021:

"(1) Admissions of attorneys and counselors to practice law in the state is hereby declared to be a judicial function.

"(2) The Supreme Court of Florida, being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state."

Exhibit "7C": Sec. 454.11:

"Every attorney duly admitted or authorized to practice in this state shall . . . **** be deemed officers of the court for the administration of justice, and amenable to the rules and discipline of the court in all matters of order or procedure not in conflict with the constitution and laws of this state."

Exhibit "8C": Sec. 455.201:

"(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department [of professional regulation] shall be entitled to do so as a matter of right if otherwise qualified.***

"(3) . . . No board shall take any action which tends to create

or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.***''

Exhibit ''9C'': Sec. 542.16:

Purpose. The Legislature declares it to be the purpose of this act to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition. It is the intent of the Legislature that this act be liberally construed to accomplish its beneficial purpose.''

Exhibit ''10C'': Sec. 731.105;

''Probate proceedings are in rem proceedings.''

Exhibit ''11C'': Sec. 733.6175:

''***Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.''

Exhibit ''12C'': Sec. 733.619:

''(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract, except a contract for attorney's fee. . . .***

''3) Claims based on contracts, except a contract for attorney's fee, entered into by a personal representative in his fiduciary capacity . . . may be asserted against the estate by proceedings against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.''

EXHIBIT 13C

FLORIDA CODE OF PROFESSIONAL RESPONSIBILITY, DR 2-106(A), (B)

DR 2-106. Fees for Legal Services

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determinig the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

EXHIBIT 14C

Relevant Portions of the
RULES REGULATING THE FLORIDA BAR
CHAPTER 4: RULES OF PROFESSIONAL CONDUCT
SECTION 4-1.5: FEES FOR LEGAL SERVICES

"(**A**) An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee. A fee is clearly excessive when:

(1) After review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee exceeds a reasonable fee for services provided to such a degree as to constitute clear over-reaching or an unconscionable demand by the attorney; or

(2) The fee is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a non-client party, or any court, as to either entitlement to, or amount of, the fee.

(**B**) Factors to be considered as guides in termining a reasonable fee include the following:

(1) The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill required to perform the legal service properly;

(2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(4) The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained.

(5) The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(8) Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(C) In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

(D) Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreement, unless found to be illegal, prohibited by this rule, or clearly excessive as defined by this rule.

(E) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(F) As to Contingent Fees:

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which

a contingent fee is prohibited by paragraph (F)(3) or by the law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or pecentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. * * *

(3) A lawyer shall not enter into an arrangement for, charge, or collect:

(a) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlementin lieu thereof; or

(b) A contingent fee for representing a defendant in a criminal case.

(4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements: * * * *

(b) The contract for representation of a client in a matter set forth in paragrfaph (F)(4) may provide for a contingent fee arrangement as agreed upon by the client and the lawyer, except as limited by the following provisions:

1. Without prior court approval as specified below, any contingent fee which exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:

a. 33-⅓% of any recovery up to $1 million through the time of filing of an answer or the demand for appointment of arbitrators;

b. 40% of any recovery up to $1 million through the trial of the case;

c. 30% of any recovery between $1 and $2 million;

d. 20% of any recovery in excess of $2 million;

e. If all defendants admit liability at the time of filing their initial answers and request a trial only on damages:

(i) 33-⅓% of any recovery up to $1 million through trial;

(ii) 20% of any recovery between $1 and $2 million;

(iii) 15% of any recovery in excess of $2 million;

f. An additional 5% of any recovery after notice of appeal is filed or post-judgment relief or action is required for recovery on the judgment.

2. If any client is unable to obtain an attorney of the client's choice because of the limitations set forth in (F)(4)(b)1., the client may petition the circuit court for approval of any fee contract between the client and an attorney of the client's choosing. Such authorization shall be given if the court determines the client has a complete understanding of his or her rights and the terms of the proposed contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneoulsy with the filing of a complaint. Proceedings thereon may occur before service on the defendant and this aspect of the file may be sealed. Authorization of such a contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under (A) and (B).****

(d) As to lawyers not in the same firm, a division of any fee within paragraph (F)(4) shall be on the following basis:

1. To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

2. To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive.

3. The 25% limitation shall not apply to those in cases in which two (2) or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply for circuit court authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel which shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneoulsy with the filing of a complaint. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this section shall contain a certificate showing service on the client and The Florida Bar. Counsel may proceed with representation of the client pending court approval.

4. The percentages required by this section shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.*****"

EXHIBIT 15C

Relevant Portions of the
RULES REGULATING THE FLORIDA BAR
CHAPTER 3: RULES OF DISCIPLINE
SECTION 3-7.5(K)(1)(5): PROCEDURES
BEFORE A REFEREE

"***The referee's report shall include: *** a statement of costs of the proceedings and recommendations as to the manner in which costs should be taxed. The costs shall include court reporter's fees, copy costs, witness fees and traveling expenses, and reasonable traveling and out-of-pocket expenses of the referee and bar counsel, if any. Costs shall also include a $250 charge for administrative costs at the grievance committee level and a $250 charge for administrative costs at the referee level. Costs taxed shall be payable to The Florida Bar.****"

EXHIBIT 1D

SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Complainant,	)	
vs,	)	No. 73,214
T. CARLTON RICHARDSON, Respondent	)	

TRANSCRIPT OF PRELIMINARY MOTIONS BEFORE REFEREE

(Excerpts from Transcript of Final Hearing at 3-23)

* * *

MR. RICHARDSON: Your Honor, I have certain preliminary motions.

I have filed with the Court the memorandum in support of the first motion, which is to exclude the testimony, any testimony or any documentary evidence regarding the probate proceedings in which the probate court made certain determinations regarding fees that were paid by the client and ordered a refund.

Just as a summary because I know the Court has had a chance to read the memorandum, the basic grounds for the objection is the lack of jurisdiction of the probate court to make the determination in the first instance.

This Court insofar as a proceeding can make a determination and determine whether or not the Court had the jurisdiction to do what it has. This does not affect what it did, but the proceeding in the probate proceedings was not between the Florida Bar and T.C. Richardson but was between T.C. Richardson and the personal representative of the estate, and

that what occurred there is not res judicata here anyway.

The primary reason for it is that one, the jurisdiction of the probate court is in rem, and that is, it must affect property and assets of the estate. The Bar has admitted that the estate paid me no funds. If the estate paid me no funds, there's no assets of the estate of which the Court can order me to refund that.

Secondly, the contract between the personal representative and his wife and myself in regard to services that we rendered in the estate are personal obligations of the personal representative.

Florida statute says that all contracts of a personal representative in their representative capacity are obligations of the estate except attorney's fees; it's clear, except an attorney fee contract.

Not only that, in the case of *In Re: Leevers* [sic: *Lieber*] which is one of the leading cases on attorney's fee and how you deal with attorney's fees, the Supreme Court made a specific statement that the contract between the personal representative and their attorney is a personal contract between them. And, of course, the probate court has no jurisdiction to be hearing matters between the parties.

Finally, the contract between the personal representative and myself that dealt with the services were executed before he even was appointed personal representative, and, therefore, even there shows that it would have no bearing insofar as the Court's jurisdiction.

The Court did not have personal jurisdiction over me in that, one, I'm not an interested party in the estate, I'm not a beneficiary of the estate, I'm not a creditor of the estate. I filed no claims asking for any funds in the estate or anything like that. I was allowed to withdraw as attorney. But the case of *Beck vs. Beck*, which the Court has been cited to, clearly says that if you want to impose a refund of fees by an attorney, you

must accord him notice and you must accord him the opportunity to be heard.

Attached to the memorandum and the file, the Court file is present for the Court to review, and it might be proper to bring the file in, the document that was filed in the file, filed by the personal representative's counsel, shows clearly the allegations that I received no notice. What happened was that they sent me copies of the petition for discharge, the final account, and some other paper. And that is no notice.

The [U.S.] Supreme Court has said consistently, over and over again, and most recently in a probate case starting from *Lane* [sic: *Mullane*] *vs. Hanover Bank and Trust Company,* classic case, first year civil procedure, that in order for a judgement [sic: judgment] to be final there must be notice and opportunity to be heard reasonably calculated to inform the person of it.

The [U.S.] Supreme Court, most recently in a case dealing with the statute of limitations in regards to probate matters, says that you have to tell the person by mail, specifically, what is going on.

In a case in between *Lane* [sic: *Mullane*] and the final case in terms of the [U.S.] Supreme Court case, was a case dealing with a mortgagor, and in that case the [U.S.] Supreme Court said the sophistication of the parties has nothing to do with it. Because I am an attorney I am not presumed — it's presumed I have certain expertise but that doesn't mean you can avoid doing what is proper to do.

Your Honor, I cannot stress to this Court the importance of jurisdiction, it is nothing to be played with. And while I cannot attack, and I concur, I cannot attack the fact determinations of the Court in that regard, I can attack its jurisdiction, and that is what I'm attacking at this particular point. If it doesn't

have jurisdiction, everything is done. The Supreme Court in Florida in the *Spitzer* case said very clearly, if you don't have in rem jurisdiction the judgement is void, null and void, period.

Now, as to the factual determinations of the Probate Court, the rule is that if it is made upon documentary evidence, and the same documents are present with this proceeding as it was in the other proceeding, this particular Court can make its determination as to what is or is not the particular facts. And the particular fact is how much was paid? That is represented by the documents that we clearly have here because this Court, of course, would have a chance to observe all the witnesses and make its determination as to any other questions of credibility insofar as those witnesses are concerned.

In conclusion, I ask the Court to exclude testimony of Judge Alvarez, to exclude any evidence regarding the probate proceedings after I was discharged in July of 1975, for those reasons.

* * * * *

Counsel for the Bar cites the fact that the Court of the 2nd DCA and the Supreme Court has made a decision regarding jurisdiction of the Probate Court. Neither Court has done that. I intend to appeal it regarding that, and that is, one, did the probate — did I receive any funds out of the probate estate? The only ruling this Court can make because we have stipulated to that fact is no, I did not. The respondent did not receive any funds out of the probate estate.

If that is the case, and the Court's jurisdiction is in rem, how then can the Probate Court order the respondent to refund monies to an estate in which he has received nothing? I mean, that should shock the conscious of this referee notwithstanding all the facts. The estate is necessarily being unjustly enriched when it paid nothing but the respondent is being ordered to refund money.

If the Probate Court was a court of general jurisdiction, what I say would have no bearing whatsoever because it could have done what it did. But the Court does not. And for this Court to award, to entertain any evidence, to give any probative force to any evidence of those proceedings after I was discharged as counsel for the estate, would deny me due process because the Court did not have the adjudicatory power to do what it did.

Currently pending before the Florida Supreme Court is a Writ of Mandamus because the second appeal — there's two appeals that have been pending. The second appeal was dismissed because of a fact that I did not receive the judgment timely, and there's an argument as to the timeliness of the filing of the appeal which the Supreme Court is considering. At no point has the Court specifically made rulings regarding the jurisdiction of the particular Probate Court. And therefore, the decision as to the Court's jurisdiction would not be binding here, that no Appellate Court has made a ruling as to the jurisdiction of the Probate Court.

The Bar argued that why they want to bring the judge in is not for this Court to accept his findings but to give some probative value to what the judge has to say in regard to his determination as to the fees that were charged in the probate proceeding.

My postion is clear, no probative force whatsoever, none, can be given if the Court's jurisdiction is lacking. This Court, and I ask the Court to make specific findings on this particular point because if the proceeding is adverse to me.

THE COURT: Okay. As to the motion to exclude evidence, it's denied.

MR. RICHARDSON: Your Honor, I move that the proceedings be dismissed on the grounds that the Bar counsel was present during the deliberations of the grievance committee

that considered these particular charges and made the probable cause. We have an admission by the Bar that it's counsel was present during the deliberations. The fact that there's an integration of the investigatory function, in other words, the investigatory function and adjudicatory function are all within the Florida Bar, the [U.S.] Supreme Court — and I provided the Court with the cases — has said that so long as there's a distinction at the stage wherein there's an adjudication, that the per se integration of both the investigatory and adjudicatory functions are okay. But once you get to the stage where there's adjudication, that becomes the dividing line.

One case I cite to the Court dealt out of the jurisdiction with the situation which Bar counsel was alleged to have been present during the proceedings, that they were making a determination in terms of findings by a Bar committee. The [U.S.] Supreme Court in that particular case said no, the simple reason is no, that he was not present or she was not present; therefore, there was no denial of due process.

But the rule clearly is that when the adjudicatory function is being exercised, at that point neither Bar counsel nor the respondent can be present; or if the Bar counsel is present, the respondent or his counsel is given permission to be present.

In the case out of Oklahoma, my memory serves me correct, the Court noted the fact that throughout the proceedings the respondent and/or his attorney was always present at all of them.

The [U.S.] Supreme Court made it crystal clear in a case which I've provided copies for the Court, that if there are facts and circumstances that show that there's an interference with the due process rights, in other words, if the Bar counsel was involved in any aspect of the adjudicatory process, that constitutes a denial of due process.

Why? Because the respondent is entitled to a fair and impartial hearing.

Even if Bar counsel says that they sat there and did not say one word, the appearance of the fact that Bar counsel was present at the time that they were deliberating on the finding of probable cause against a respondent denies due process since the respondent — and we specifically requested, and this is of record, that we be allowed to be present during the time if the Bar counsel was going to be present, and we were denied the right to be present.

Therefore, we ask the Court to dismiss these proceedings without prejudice to the Bar to start the process again with the grievance committee, and this time when they're making their determination as to probable cause, that Bar counsel nor respondent or his attorney be present; or if Bar counsel is present, that the respondent be present.

The Florida Bar says, and I want to stress this to the Court, that the finding of probable cause is like a grand jury. While Bar counsel can assist that committee in gathering the facts, while Bar counsel can be directed by that committee to collect information, to do inquiries pursuant to its direction, when it comes to the time that that committee must make a determination of probable cause, the investigatory function ends and the adjudicatory function begins. At that point it is like having the prosecutor in the jury room with the jury. That's like having, your Honor, the prosecutor sitting with you when you're making your decision insofar as Court. Whether or not that prosecutor says one thing to you, still the appearance of the idea.

Now, I don't know what went on, there's no recording, you know, but I know there's one thing, there's such things as nonverbal communications, there are other ways, other ways in which they can be communicated.

The hearing by the committee was and does deny me due process because the Bar counsel was there during deliberations, whether or not Bar counsel said a word.
* * * I would like to put into evidence on this hearing the page two that was sent to the respondent in regard to the proceedings and the nature of the grievance proceedings when ever there's a charge brought, and specifically note to the Court the second paragraph dealing with the nature of the grand jury, as it calls it a grand jury idea, insofar as the finding or probable cause.

The Florida Bar says that they can set for the committee's options and all of these types of deals. That in and of itself deals with setting the parameters insofar as what the committee can decide. And if you can tell someone what they can do, the options and stuff like that, that is involved in the adjudicatory, what if the Bar counsel made a mistake, an error, and forgot to say something?

THE COURT: Let me do this. I'll take a look at this. Do you have any objections? * * *

Okay. I thank you for the argument on this motion and we have this exhibit now in evidence but the motion is denied.* * *

MR. RICHARDSON: Your Honor, I move to dismiss on the grounds that the grievance committee of the Thirteenth Judicial Circuit contains no Blacks, either attorneys or as lay members of the committee; that the exclusion of Blacks from the grievance committee denies me due process. And the simple fact that Blacks constitute at least 12% of the population of the Thirteenth Judicial Circuit, and it is inconceivable in this day and time that the committee, not particularly my panel, but the committee itself would not have had Blacks on it either as attorneys or as lay members. Because the committee itself has none, there was no likelihood that my particular panel would have had Blacks on the committee.

That is analogous to the situation wherein you have jury selections and you have sources insofar as a pool of those jurors. It is inconsistent and inconceivable in the 1980's that any minority person should be faced with the fact of having to argue before this body or any other body, the fact that you do not have a representative cross-section of the population.

If there were no women present, the same thing applies. Not that the committee's findings would have been any different, but the fact that they were excluded from the committee denies me and any other attorney with the privilege of having members of that community sit. And they have a right to sit because they use lawyers just like every other type of community.

* * * Exclusion presupposes discrimination, that's a basic fact. If there were none on the committee, there was no opportunity for the respondent to have any on his committee.

The United States Supreme Court in an analogous situation dealing with juries, have made it clear that they should be insofar as a cross-section of the community, these committees should reflect the cross-section of the Bar and a cross-sectdion of the lay community. There's no excuse whatsoever that they should not.

THE COURT: Anything else?

MR. RICHARDSON: No, your Honor.

THE COURT: Motion is denied.

EXHIBIT 2D

RE SUPRREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant,	)	
vs.	)	No. 73,214
T. CARLTON RICHARDSON, Respondent	)	

PRELIMINARY MOTIONS (. . .
TO DISMISS OR SUMMARY JUDGMENT;
EXCLUDE EVIDENCE; . . .)

Preface

RESPONDENT, T. Carlton Richardson, Esq., moves this court (referee) for order . . . to dismiss or for summary judgment, to exclude evidence . . . and states: ***

Motion to Suppress Evidence

The Bar in response to Respondent's discovery request has listed documents and related testimony from the presiding judge and counsel for the clients, in the proceedings for refunds of fees sought by the clients in the probate division of the Hillsborough County Circuit Court, the Respondent request that the court suppress the evidence and deny its use in these proceedings for the following reasons: (1) that the probate court lack personal jurisdiction of the Respondent in that the Respondent was never given actual notice of the proceedings by sum-

mons or otherwise and thereby made a party to the probate proceedings.

* * *

(2) the probate court lacked subject matter jurisdiction in that it sought to order refund of non-estate funds, i.e. compensation paid to the Respondent out of personal funds of the clients, Mr. and Mrs. Jones pursuant to a legal services contract of which the estate [has] no interest, to the estate. * * *

(3) the final judgment by the probate court is now subject of an appeal and is based upon non-existent, undisclosed, erroneous facts, or is clearly unconscionable: * * *

Motion to Dismiss or for Summary Judgemnt

The court is asked to dismiss the complaint or in the alternative to grant summary judgment for the following reasons: (1) that the complaint is based upon proceedings which excluded members of the Afro-American community of which the Respondent is a member and such exclusion is *per se* discriminatory; (2) that the complaint is based upon grievance proceedings wherein illegal evidence was used in the finding of probable cause, namely: probate court records in [relation] to the refund proceedings against the Respondent in Hillsborough County both at trial and on appeal; (3) that the complaint is based upon proceedings which Bar counsel participated in deliberations by the Grievance Committee finding probable cause wherein the Respondent nor his attorney was permit[ted] to participate. Such participation exceeds the role of Bar counsel in the investigatory phase of the proceedings and involves Bar counsel in the adjudicatory phase which violates substantive due process and principals of fundamental fairness; * * *

EXHIBIT 3D

SUPREME COURT OF FLORIDA
GRIEVANCE COMMITTEE 13C

In Re Complaint of Roosevelt and Perry Jones,	)	
THE FLORIDA BAR, Plaintiff,	)	No. 86-19,522
vs.	)	
T. CARLTON RICHARDSON, ESQ.	)	

PRELIMINARY MOTIONS

DEFENDANT ("Attorney Richardson" or the "Attorney") moves this Panel (1) to stay the proceedings pending inclusion of a Black attorney and lay members, (2) to strike members of the panel who did preliminary investigation of the case or have a business or personal nexus to Attorney Richardson or members of his immediate family or in-laws, and (3) to exclude of use of certain evidence from collateral court proceedings and state:

1. Motion to Stay Proceedings — Impartial Tribunal.

A review of the membership of Panel reveals that it consist of no Black attorney or lay member. Assuming that the Panel was selected in a non-discriminatory manner, a complete lack of Black membership on the Panel presupposes discrimination. Attorney Richardson, a Black Tampa native, is entitled to have a Panel that is representative of the Bar and community as a whole. Both the Bar and the community have Blacks and thus they should be involved in the disciplinary process so that there will be no question as to fairness and impartiality on the part

of the Panel. To exclude Black members from the Panel hearing his case, whether intentional or not, violates a fundamental right of due process to which the Defendant is entitled.

WHEREFORE, Attorney Richardson request that the Panel stay proceedings pending appointment of one or more Black attorneys and lay members to this hearing Panel.

2. Motion to Strike Panel Members.

In order to accord funamental fairness in the due process to be accorded Attorney Richardson in this disciplinary proceedings, the Panel should be, not only representative of the Bar and community as a whole, but also impartial. It is inherently prejudicial for the Panel to allow itself to be both prosecutor and judge, even at an "informal stage" of the proceedings. Valuable property rights of Attorney Richardson are involved, i.e. his right to practice law not only in Florida but other jurisdictions, to which an adverse decision would impact upon negatively causing a inability or denial of a prospective business advantage and preclude Attorney Richardson from any position of trust within or without his chosen profession, the law. To allow the participation in the decision-making process of any Panel member who has *ex parte* knowledge of these proceedings is patently unfair and denies due process to Attorney Richardson. Bear in mind that the interest of Attorney Richardson in protecting his valuable property right is to be safeguarded notwithstanding the state's interest in the administration of justice by its court officers who should have high moral and ethical standards for the general welfare of the public and to perform the trusts imposed upon attorneys. Attorney Richardson is entitled at all stages of these proceedings to be fully apprised of the evidence, oral or documentary, that a Panel member is to receive so as to accord him an opportunity to be heard and to respond. *Ex parte* investigations by Panel members are suspect because of the lack of opportunity at the time the

information is obtained by the investigator for Attorney Richardson to object or explain its relevance. Clients have been known, in Attorney Richardson's experience as well as other lawyers, to have selective memories, to omit relevant information, and to otherwise present facts most favorable to their claims.

Furthermore, if there is a member(s) who is employed by corporations to which Attorney Richardson has a business relationship, e.g. loans with banks, etc., the employee or officer of the corporation should be excluded.

WHEREFORE, it is requested that any Panel member who has *ex parte* knowledge of these proceedings or conducted any investigation be precluded from the Panel as a part of its decision-making responsibilities. Furthermore, any Panel member who is shown to have a nexus, business or personal, either to Attorney Richardson or a member of his immediate family or in-laws should be removed from the Panel.

3. Motion to Exclude Evidence.

Attorney Richardson believes that there will be an attempt to introduce court documents in collateral proceedings between the Jones' and himself before the Probate Court of Hillsborough County. He strenuously objects to the use of such evidence in these proceedings: * * * (2) because the probate [court] exceeded its jurisdiction by deciding issues regarding the attorney fee contract between the Jones' and Attorney Richardson which have no relationship to the property of the Estate of Luela King, Deceased; * * *

Further, (4) because the proceeding in the Probate Court involved a[n] attempt by the Jones' to obtain a refund for an alleged overpayment of legal fees without going to the civil division, a pure breach of contract or collection action, * * * From the beginning the purpose was to wrongfully use the Probate Court to collect an apparent overcharge by Attorney

Richardson, clearly an abuse of process. * * * Finally, (5) Even if the findings of the probate court were to be given probative force, they do not support a finding of probable cause for "clearly excessive fee" because: (a) there was no agreement to pay the Attorney compensation by the King Estate, (b) the King Estate paid no fees to the Attorney, nor (c) has the Attorney sought to collect from the King Estate any fee.

While the Bar can simultaneously investigate a complaint that is also a subject of a judicial proceeding, that does not mean that the Bar may use evidence obtained in that proceeding which has not been finally resolved as a basis for charging a violation of the Code of Professional Conduct by Attorney Richardson. If it wants to use such evidence, it must wait * * *

WHEREFORE, it is requested tht the Panel not receive any evidence from the Probate Court proceedings, or in the alternative, to stay these disciplinary proceedings pending the final resolution of the Probate Court proceedings. * * *

EXHIBIT 4D

SUPREME COURT OF FLORIDA
GRIEVANCE COMMITTEE 13C

In Re Complaint of Roosevelt and Perry Jones	)	
THE FLORIDA BAR, Plaintiff,	)	
vs.	)	No. 86-19,522
T. CARLTON RICHARDSON, ESQ. Defendant.	)	

MOTION FOR SUMMARY DISMISSAL

PLAINTIFF ("Attorney Richardson" or "Attorney") moves this Panel for a summary finding of lack of probable cause and dismissal of the client complaint, and states:

1. Preface

These proceedings relate to a complaint filed by clients of Attorney Richardson alleging that he charged an excessive fee for services rendered. The Florida Bar ("Bar") has brought charges that Attorney Richardson may have violated . . . DR 2-106(A) [a transaction involving an "illegal or clearly excessive fee"]. It is before the Panel now for a determination of probable cause. The Defendant's position under the undisputed facts of this case is that a finding of probable cause . . . (1) would violate the Defendant's constitutional right of freedom of contract in that the Panel, as agent of the Florida Supreme Court, would be required to make an impermissible determination of the fee which the Attorney should have charged which it cannot do. * * *

2.2. A "Clearly Excessive Fee" is not Shown under the Facts

The U.S. Supreme Court has held that a Bar cannot establish minimum fee schedules. See, *Goldfarb v. Virginia State Bar,* 421 U.S. 733 (1975). Thus it would be impermissable for the Bar, under the guise of attorney discipline, to establish the fee that an attorney should have charged n a particular matter. To do so would be to do indirectly that which the Bar cannot directly ty do. Further, such action would have a "chilling effect" upon the right of the attorney to contract for a fee [See, *The Florida Bar re Amendment,* 494 S.2d 960, *967* (Fla., 1986)] from his clients fearing that whatever fee he sets may well be found to be "clearly excessive" and the attorney be subjected to discipline.

* * *

3. Relief Requested

The Attorney has breached no fiduciary duty to his clients regarding the disclosure of information underlying the fee charged. The fee was not illegal or fraudulently obtained nor is there conduct amounting to "moral turpitude". Since the amount of the fee charged is irrelevant, the inclusion of any evidence from the collateral probate proceedings irrelevant, and no showing of a specific intent to exact a "clearly excessive fee" there is no factual basis for a finding that probable cause exist. Lacking such a factual predicate, these proceedings should be dismissed with any comments, admonitions or warnings that the Panel deems necessary and proper. * * *